

Exhibit 67:

Dr. Rachel Lovell Deposition Transcript



(248)608-9250 Fax (844)270-7115
www.tri-countycourtreporters.com
depos@tricountyreporters.com

Transcript of the Testimony of
Lovell, Rachel

Date: May 19, 2023
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Case: Does, et al v. Whitmer, et al

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5/19/2023

<p style="text-align: center;">UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated, File No. 2:22-cv-10209 Plaintiffs, Hon. Mark A. Goldsmith Mag: Curtis Ivy, Jr. -vs- GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their official capacities, Defendants.</p> <hr/> <p style="text-align: center;">REMOTE DEPOSITION OF RACHEL LOVELL</p> <p style="text-align: center;">Taken on Friday, May 19, 2023, in Bay Village, Ohio.</p> <p style="text-align: center;">REPORTED BY: Kelly Bonheim, CSR-8167 Certified Stenographic Reporter</p> <p style="text-align: center;">Page 1</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiff: AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN 4 By: MIRIAM J. AUKERMAN (P63165) 5 BY: DAYJA S. TILLMAN (P86526) 1514 Wealthy Street 6 Suite 260 Grand Rapids, Michigan 7 49506-2700 (616) 301-0930 8 Maukerman@aclumich.org Dtilman@aclumich.org 9 Appearing remotely</p> <p>10</p> <p>11 For the Plaintiff: UNIVERSITY OF MICHIGAN LAW SCHOOL 12 By: PAUL D. REINGOLD (27594) 801 Monroe Street 802 Legal Research Bldg 13 Ann Arbor, Michigan 48109-1210 14 (734) 355-0319 Pdr@umich.edu Appearing remotely</p> <p>15</p> <p>16</p> <p>17 For the Defendant: MICHIGAN DEPT OF ATTORNEY GENERAL 18 By: SCOTT L. DAMICH (P74126) PO Box 30754 Lansing, Michigan 48909-8254 19 (517) 335-7573 Damichs@michigan.gov Appearing remotely</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 2</p>
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<p>1 Bay Village, Ohio 2 Friday, May 19, 2023 3 9:09 a.m. 4 * * * 5 RACHEL LOVELL, 6 was thereupon called as a witness herein and, 7 after having been first duly sworn to tell the 8 truth, the whole truth and nothing but the truth, 9 was examined and testified as follows: 10 EXAMINATION 11 BY MS. AUKERMAN: 12 Q. Good morning, Dr. Lovell. Nice to meet you. My 13 name is Miriam Aukerman. I am currently an 14 attorney at the ACLU of Michigan. Before that, I 15 was an attorney at Legal Aid where, among other 16 things, I represented survivors of domestic 17 violence. So reading your work was really 18 interesting. 19 I represent the plaintiffs in this case. 20 Have you ever been deposed before? 21 A. I have. 22 Q. Can you tell me in what circumstances that was? 23 A. I -- for a civil suit, I was in a car accident. 24 Q. Okay. Any other time? 25 A. No, not as an expert witness. This is the first</p> <p style="text-align: center;">Page 5</p>	<p>1 time being deposed as an expert witness. 2 Q. Oh. Okay. Have you ever testified in court? 3 A. No. 4 Q. Okay. So I just want to go over -- if you've been 5 deposed before, you might be familiar with this, 6 but I just want to go over some of the basic rules 7 for depositions. You have to verbally answer the 8 questions that I ask. The court reporter can't 9 take things down if you nod or smile or shake your 10 head or something like that. 11 We have to try to avoid talking over each 12 other. I know that I sometimes do that, and so I 13 will do my best not to do that to you, and then we 14 can try to both avoid that. The court reporter 15 will let us know if we're talking too fast, which 16 is also something that I tend to do. 17 So, you know, we're trying to make it as 18 easy as possible for the court reporter to get an 19 accurate transcript of our conversation today. If 20 you need clarification on a question, can you ask 21 me for that clarification? 22 A. Yes. 23 Q. And if you answer a question, I'll assume that you 24 understood the question, okay? 25 A. Got it.</p> <p style="text-align: center;">Page 6</p>
<p>1 Q. Okay. From time to time, your attorney may object 2 to a question. Unless your attorney instructs you 3 not to answer the question, the objection gets 4 noted for the record but you continue then to 5 answer the question. We can take a break if you 6 need to. 7 It might be a long day, we'll see how 8 quickly we get through everything. But if you do 9 want to take a break, we just ask that you answer 10 any pending question that's out there before we go 11 into a break. And finally today, I'm going to ask 12 you to talk about the opinions that are listed in 13 your report. I'm not going to ask you to offer 14 opinions that are not already disclosed in your 15 report. Is that fair? 16 A. Yes. 17 Q. Okay. So if you start to offer an opinion that's 18 not discussed in your report, I'll probably cut 19 you off because that's not something that's been 20 disclosed already; fair enough? 21 A. Fair enough. 22 Q. Okay. So I think we already clarified where you 23 are. Is there anything in front of you other than 24 the computer screen? 25 A. Yeah, so I have a piece of -- you know, drinks</p> <p style="text-align: center;">Page 7</p>	<p>1 and -- well, just water. Not other kinds and -- 2 it's a little early. And then I have some of the 3 articles and other sorts of things that were cited 4 in the -- the paper and other sorts of references. 5 Q. And do you have a copy of your report there with 6 you? 7 A. I -- I have it. I'm pulling it up on my computer 8 screen. 9 Q. Okay. 10 A. I forgot to print that off when I was at the 11 office. 12 Q. Okay. Are you under the influence of any 13 medications or other condition that might affect 14 your ability to testify today? 15 A. No. 16 Q. Okay. Anything else that would prevent you from 17 answering questions truthfully today? 18 A. No. 19 Q. Okay. So let's talk a little bit about how you 20 prepared for your deposition today. What did you 21 do to prepare? 22 A. I read -- I read over the -- the rebuttals to 23 the -- that -- that were provided to me and read 24 through some of the articles cited in those 25 rebuttals. And then yesterday, I also prepared</p> <p style="text-align: center;">Page 8</p>

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<p>1 by -- yeah, just reading, taking notes on those</p> <p>2 rebuttals and then sort of re-reading the</p> <p>3 declaration that I wrote.</p> <p>4 Q. Okay. Did you have any meetings or conversations</p> <p>5 with your attorneys? Not to tell me what you</p> <p>6 discussed, but did you meet or talk with your</p> <p>7 attorneys?</p> <p>8 A. We talked about just, like, deposition prep. Is</p> <p>9 that...</p> <p>10 Q. Yeah. I mean, I don't want to hear what you</p> <p>11 talked about.</p> <p>12 A. Okay. Yeah, right. Yeah, so -- yeah.</p> <p>13 Q. Yeah.</p> <p>14 A. Just sort of prepare me for -- for the structure</p> <p>15 and the format and things like that.</p> <p>16 Q. Okay. And how many times did you meet?</p> <p>17 A. Once.</p> <p>18 Q. And for how long?</p> <p>19 A. An hour.</p> <p>20 Q. Okay. And you talked about reviewing the</p> <p>21 documents. Anything else that you reviewed?</p> <p>22 A. Can you be maybe --</p> <p>23 Q. I mean, you mentioned that you read the rebuttal</p> <p>24 reports. You mentioned that you read some of the</p> <p>25 articles that were cited. You read your own</p> <p style="text-align: center;">Page 9</p>	<p>1 report and some of the articles. Did you read</p> <p>2 articles that you had cited in your report as</p> <p>3 well?</p> <p>4 A. No, I did not read those. I'm -- I'm very</p> <p>5 familiar with those. Most of those are mine. So</p> <p>6 I didn't -- I didn't need to review those. But I</p> <p>7 did review sort of -- yeah, like some of the</p> <p>8 literature cited in the -- in the rebuttals and</p> <p>9 other sorts of things.</p> <p>10 Q. Okay. And did you speak with anyone else about</p> <p>11 your deposition?</p> <p>12 A. No, I told my husband this morning that I had one,</p> <p>13 but that's it.</p> <p>14 Q. Okay. Fair enough.</p> <p>15 A. I told him that I -- he's going to have to take</p> <p>16 care of if my daughter needs something dropped off</p> <p>17 at school. And so I'm, like, well, I'm off the</p> <p>18 grid for a little bit, you're going to have to</p> <p>19 take care of the dropping something off.</p> <p>20 Q. Fair enough. Okay.</p> <p>21 (At 9:15 a.m., Exhibit 1 marked.)</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. So let's turn to your report. I'm going to just</p> <p>24 share my screen here. Okay. Are you seeing a</p> <p>25 copy of your report there?</p> <p style="text-align: center;">Page 10</p>
<p>1 A. Yes, I am.</p> <p>2 Q. Is there a way that I can make -- I just want</p> <p>3 to -- I'd like to see you on a larger screen. I'm</p> <p>4 not --</p> <p>5 MS. AUKERMAN: I don't know if the court</p> <p>6 reporter knows how to --</p> <p>7 THE WITNESS: So if you hit the plus</p> <p>8 button above in the middle toolbar, maybe it looks</p> <p>9 like. In the middle of your toolbar, in the</p> <p>10 middle of your screen at the top.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Okay. So this is your declaration. I believe</p> <p>13 it's dated -- this is your declaration, correct?</p> <p>14 It's dated March 20th, 2023?</p> <p>15 A. Is there a date on -- do you have a date on there?</p> <p>16 Okay. Yep. Perfect.</p> <p>17 Q. Okay. And you wrote this report?</p> <p>18 A. I did.</p> <p>19 Q. And did anyone help you write it?</p> <p>20 A. No.</p> <p>21 Q. Okay. Was anyone else doing research related to</p> <p>22 writing the report? I don't mean articles you</p> <p>23 cited but just research for the report itself.</p> <p>24 A. No.</p> <p>25 Q. Okay. And did anyone tell you to make any</p> <p style="text-align: center;">Page 11</p>	<p>1 assumptions as you were writing the report, things</p> <p>2 that you should assume?</p> <p>3 A. No.</p> <p>4 Q. Okay. Or provide you with any facts that are not</p> <p>5 included in the materials that are cited in your</p> <p>6 report?</p> <p>7 A. No.</p> <p>8 Q. Okay. And you mentioned before that you've not</p> <p>9 been qualified by a court as an expert previously,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. So are you familiar with the Federal Court</p> <p>13 Rules about expert reports?</p> <p>14 A. I am.</p> <p>15 Q. Okay. So let's review those. Let me -- okay.</p> <p>16 Can you see this -- these are the Federal</p> <p>17 Court Rules. Can you see those?</p> <p>18 A. I can.</p> <p>19 Q. Okay. So this requires you to have a complete</p> <p>20 statement of all opinions that the witness will</p> <p>21 express and the basis and reasons for them,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. So are all the opinions that you intend to</p> <p>25 offer in this case, those are contained within</p> <p style="text-align: center;">Page 12</p>

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<p>1 your report, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you haven't left anything out?</p> <p>4 A. No.</p> <p>5 Q. Okay. And your report is also complete -- your</p> <p>6 report also contains a complete statement of the</p> <p>7 basis and reasons for your opinion, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. You haven't left anything out in terms of</p> <p>10 the basis or reasons for your opinion?</p> <p>11 A. No.</p> <p>12 Q. Okay. And then if we look at the second one here,</p> <p>13 requires you to provide -- the report to provide</p> <p>14 the facts or data considered by the witness in</p> <p>15 forming your opinions, correct?</p> <p>16 A. Does that -- when we interpret for research, does</p> <p>17 that mean that I've cited and provided sufficient</p> <p>18 evidence to be able to support the statements? Is</p> <p>19 that the interpretation of that?</p> <p>20 Q. Yeah. I think what we're talking about is that</p> <p>21 your report indicates that you provide the basis,</p> <p>22 the facts, and the data that you consider. So if</p> <p>23 your report cites something, we can then look at</p> <p>24 the citation. But your report has -- describes</p> <p>25 the facts and data that you relied on, correct?</p> <p style="text-align: center;">Page 13</p>	<p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 MR. DAMICH: I'm going to go ahead and</p> <p>4 put an ongoing objection to a lack of foundation</p> <p>5 for Dr. Lovell's ability to testify about the</p> <p>6 Federal Court Rules.</p> <p>7 MS. AUKERMAN: Noted.</p> <p>8 MR. DAMICH: The Rules of Evidence.</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Okay. And so you've identified all the underlying</p> <p>11 documents that support your opinions, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 MS. AUKERMAN: So I'm going to just state</p> <p>15 for the record that Dr. Lovell's report cites a</p> <p>16 paper called, "Rethinking estimates of sexual</p> <p>17 recidivism: How the national assault kit</p> <p>18 initiative is changing our understanding of repeat</p> <p>19 sexual offending."</p> <p>20 That paper is not publicly available. We</p> <p>21 repeatedly asked for that paper and it was not</p> <p>22 provided to us in advance of this deposition.</p> <p>23 Meaning that we cannot -- we're not -- it was not</p> <p>24 provided to us, so we're going to object to the</p> <p>25 defendants use of anything in Dr. Lovell's report</p> <p style="text-align: center;">Page 14</p>
<p>1 that cites to or is derived from that paper.</p> <p>2 THE WITNESS: I'm sorry, can you tell me</p> <p>3 which one again?</p> <p>4 BY MS. AUKERMAN:</p> <p>5 Q. Okay. So I can show you. Can you --</p> <p>6 A. Okay.</p> <p>7 Q. If I switch, can you see your report here when I</p> <p>8 switch over to that?</p> <p>9 A. Um-hum.</p> <p>10 Q. Okay. So you cite -- okay. It's this one right</p> <p>11 here.</p> <p>12 Rachel Lovell, [as read], "Rethinking</p> <p>13 estimates of sexual recidivism: How the National</p> <p>14 Sexual Assault Code Initiative is changing our</p> <p>15 understanding of repeat sexual offending." So</p> <p>16 it's the one set in Footnote 24.</p> <p>17 A. Okay. Yes, that's a present -- that's a</p> <p>18 conference presentation.</p> <p>19 Q. Okay. So that was not provided to us despite our</p> <p>20 request. So I'm just stating for the record that</p> <p>21 we're going to object to any use -- anything in</p> <p>22 the declaration that relies on that information</p> <p>23 since it wasn't provided to us. Okay. So let's</p> <p>24 move forward.</p> <p>25 When were you retained in this case?</p> <p style="text-align: center;">Page 15</p>	<p>1 A. Does retain mean first talk to or, like, made</p> <p>2 decisions upon? Like, you know, more final or</p> <p>3 early conversations?</p> <p>4 Q. So why don't you just tell me that -- that's a</p> <p>5 great question. So why don't you just tell me</p> <p>6 when you first were approached about it and then</p> <p>7 when you decided to move forward with being an</p> <p>8 expert.</p> <p>9 A. I don't remember the exact month. Would you like</p> <p>10 me to search my emails or just give you a</p> <p>11 general --</p> <p>12 Q. No, just approximately.</p> <p>13 A. Approximately, in the winter, early winter. If it</p> <p>14 was March when I wrote this, yeah, maybe early</p> <p>15 winter.</p> <p>16 Q. Okay.</p> <p>17 A. And for me, that means I go sort of academic</p> <p>18 calendars. That's the way my sort of brain</p> <p>19 thinks. So I'm thinking probably somewhere around</p> <p>20 January or February maybe.</p> <p>21 Q. Okay. And what was your assignment in this case?</p> <p>22 What were you asked to provide an opinion on?</p> <p>23 A. To provide information about the research that I'm</p> <p>24 primarily doing, as well as in general the</p> <p>25 research around the sexual assault kits and how it</p> <p style="text-align: center;">Page 16</p>

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<p>1 speaks to undetected sexual offending and the -- 2 the -- the serial offending nature of sex 3 offenders. As well as some of the work cited 4 around cost benefit analysis. And, you know, 5 general sexual offending behavior. 6 Q. Okay. Before you agreed to serve as the 7 defendants expert in this case, did you learn 8 anything about what this case is about? 9 A. No. 10 Q. Did you read any documents about the case? 11 A. No. 12 Q. And are you familiar with the case outside of your 13 work for the defendants? 14 A. No. 15 Q. Okay. If I ask you what this case is about, could 16 you tell me? 17 A. I can give a general synopsis I think. I haven't 18 actually read any of, you know, the sort of the -- 19 the statements or anything that's filed with the 20 court that lays out the general arguments. But 21 I've been provided some information about the 22 general idea of what the -- what the lawsuit 23 pertains to. Would you -- 24 Q. Yeah. What, in your understanding, is this case 25 about?</p> <p style="text-align: center;">Page 17</p>	<p>1 A. It's about the Michigan Sex Offender Registry. 2 And specifically -- and this is also based upon 3 what I see in the rebuttals and what was cited in 4 the other declarations around the extent of 5 which -- or the recidivism sex offender 6 registration in terms of an inspect -- the 7 registrations effect on recidivism. And it 8 appears from one of the rebuttals, there's 9 something around risk assessments. 10 Q. Do you know anything about the -- do you know -- 11 A. And some aspect -- I'm sorry, we're talking -- 12 Q. Oh, no, go ahead. 13 A. Some aspect of the -- the -- yeah, the -- the risk 14 assessments for sex offenders. 15 Q. Do you know anything about the plaintiffs in this 16 case? 17 A. No. No. 18 Q. And did you do any research on, you know, who's on 19 the Michigan Sex Offender Registry or anything 20 like that? 21 A. No. 22 Q. Okay. Were you told anything about the facts of 23 this case? 24 A. Can you maybe provide a little bit more 25 information as to, like, what the -- what facts</p> <p style="text-align: center;">Page 18</p>
<p>1 specifically? 2 Q. So for example, were you provided the complaint in 3 this -- or did you read the complaint in this 4 case, which is the initial court document? 5 A. No. 6 Q. Were you provided any other facts by the 7 defendants about the case? I'm not talking about 8 the rebuttal or expert reports but any other -- 9 A. Like -- 10 Q. Facts about Michigan's registry, anything like 11 that. 12 A. I did ask at one point if -- how -- because 13 different states obviously have different terms of 14 the registry. So I had something -- I had a 15 question about whether Michigan's registry -- 16 because I couldn't really find that information. 17 Whether it had sort of, like -- in Ohio, they call 18 them, like, violent specs. 19 Or, like, a specification where, you 20 know, like, there's -- I know California -- I was 21 reading some stuff around California's violent 22 specs, and I know Ohio has some. They can add 23 specs to the specs -- some aspect of that. And so 24 I asked a question about whether Michigan had 25 that, and apparently, the answer was no -- or, you</p> <p style="text-align: center;">Page 19</p>	<p>1 know, to what I was asking. But other than that, 2 I didn't -- I didn't look up any specific things 3 around the Michigan registry. 4 Q. Why did you want to know about violent specs? 5 A. The aspect of violent specs because there's some 6 conditions under which, right, the violent specs 7 has the idea of repeat offending, as well as 8 propensity or probability of competing another 9 violent spec. So I wanted to see the extent to 10 which that was the case. I read a couple articles 11 that mentioned different specifications, you know, 12 and how that might fit in with the registry -- in 13 the literature. 14 Q. So is it fair to say that you were interested in 15 understanding whether the registry distinguishes 16 between different types of offenders? 17 A. I -- no, because I assumed that it did. 18 Q. Okay. So you assumed that the registry makes 19 categorizations somehow based on risk? 20 A. It has tiers, I assume. 21 Q. Okay. But you're not familiar with how Michigan 22 categorizes registrants? 23 A. No. 24 Q. Okay. 25 Okay. Which of the expert reports of the</p> <p style="text-align: center;">Page 20</p>

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<p>1 plaintiffs experts did you review?</p> <p>2 A. The ones that pertained primarily to the research</p> <p>3 that I do. So I looked at Hanson's report. And</p> <p>4 then I also reviewed -- there's another -- I can't</p> <p>5 remember her name, but she also does research in</p> <p>6 this area. It's a -- I forgot her name.</p> <p>7 Q. Dr. Letourneau?</p> <p>8 A. That sounds right, I think. I'd have to</p> <p>9 double-check with -- like, to -- to be sure.</p> <p>10 Like, because I'd have to look it up, to look at</p> <p>11 the report to make sure it was that one. Yeah,</p> <p>12 those are -- the best I recall, those are the only</p> <p>13 two that I looked at.</p> <p>14 Q. And those were the initial expert reports,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And then you said you looked at rebuttal reports?</p> <p>18 A. Correct.</p> <p>19 Q. And those would be the rebuttal reports from Dr.</p> <p>20 Hanson and Dr. Socia?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Did you look at any deposition testimony?</p> <p>23 A. No.</p> <p>24 Q. Did you look at any data regarding the Michigan</p> <p>25 Sex Offender Registry?</p> <p style="text-align: center;">Page 21</p>	<p>1 A. No.</p> <p>2 Q. Did you look at any DNA data related to the</p> <p>3 Michigan Sex Offender Registry?</p> <p>4 A. No.</p> <p>5 Q. Anything else that you looked at?</p> <p>6 A. No.</p> <p>7 Q. Were there any materials that you asked the</p> <p>8 defendants to provide that they didn't provide to</p> <p>9 you?</p> <p>10 A. No.</p> <p>11 Q. Did you conduct any independent studies for the</p> <p>12 purposes of writing this report separate from the</p> <p>13 work that you have conducted generally as a</p> <p>14 scholar?</p> <p>15 A. Meaning did I try to research or come up with</p> <p>16 different topics as it relates -- I'm just trying</p> <p>17 to make sure I understand what you mean by study.</p> <p>18 Q. Sure. Absolutely. I want to make sure that</p> <p>19 we're -- that's exactly what I mean when I say</p> <p>20 clarify the question.</p> <p>21 So what I'm asking I guess is, your</p> <p>22 report cites research that you've done otherwise,</p> <p>23 but did you conduct any separate new research for</p> <p>24 purposes of writing this report?</p> <p>25 A. Oh. No, I did not.</p> <p style="text-align: center;">Page 22</p>
<p>1 Q. Okay. And your report does not mention any of the</p> <p>2 reports that you -- that plaintiffs' expert</p> <p>3 reports that you received, correct?</p> <p>4 A. Like did I cite -- like that I don't specifically,</p> <p>5 like -- there wasn't like a rebuttal. So I'm not</p> <p>6 saying, like, "Hanson said this," or, "So and so</p> <p>7 said that?"</p> <p>8 Q. Correct.</p> <p>9 A. No.</p> <p>10 Q. So you weren't addressing those reports in your</p> <p>11 report? You weren't -- let me clarify that. You</p> <p>12 weren't addressing the plaintiffs reports in your</p> <p>13 report?</p> <p>14 A. I would say I wasn't specifically like --</p> <p>15 specifically addressing certain aspects, but</p> <p>16 certain -- so the beginning ones informed how I</p> <p>17 thought about and was writing what I wrote.</p> <p>18 Because I was trying to see what they were</p> <p>19 writing, right? So it was a general informing,</p> <p>20 but it wouldn't -- I wasn't necessarily, like,</p> <p>21 making a complete, like, direct reference to their</p> <p>22 stuff.</p> <p>23 Q. Okay. So let me ask you about sort of your past</p> <p>24 work and expertise.</p> <p>25 So have you done any prior work with the</p> <p style="text-align: center;">Page 23</p>	<p>1 State of Michigan or any of the individual</p> <p>2 defendants in this case?</p> <p>3 A. No.</p> <p>4 Q. Okay. Or with the defendants attorneys?</p> <p>5 A. No.</p> <p>6 Q. Are you currently working with the defendants or</p> <p>7 their attorneys on any other cases?</p> <p>8 A. No.</p> <p>9 Q. And are you currently working on other cases, any</p> <p>10 other litigation?</p> <p>11 A. As an expert witness?</p> <p>12 Q. Yes, as an expert.</p> <p>13 A. Yeah. No.</p> <p>14 Q. Okay. And you mentioned that you've not testified</p> <p>15 as an expert before, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you've not been retained as an expert before,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So the defendants are, as you know, seeking</p> <p>21 to qualify you as an expert in this case, right?</p> <p>22 And is it fair to say that no one is an expert in</p> <p>23 everything, right?</p> <p>24 A. Correct.</p> <p>25 Q. So a person could be an expert on some things but</p> <p style="text-align: center;">Page 24</p>

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<p>1 not on other things, right?</p> <p>2 A. Correct.</p> <p>3 Q. And that same is true for you, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So let's talk about the areas where you think a</p> <p>6 court should find that you're an expert. Now your</p> <p>7 report says that your research focuses on</p> <p>8 gender-based violence and the victimization,</p> <p>9 particularly sexual assault, human trafficking and</p> <p>10 intimate partner violence; is that accurate?</p> <p>11 A. That is accurate.</p> <p>12 Q. Okay. And would you hold yourself out as an</p> <p>13 expert in gender-based violence and victimization?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What do you mean by gender-based violence?</p> <p>16 A. Violence that primarily happens to women and</p> <p>17 girls.</p> <p>18 Q. Anything else when you say gender-based violence?</p> <p>19 A. No. Yeah, just the victimization is</p> <p>20 disproportionately experienced by women and girls.</p> <p>21 Q. Okay. And that sounds like a really large topic,</p> <p>22 gender -- you know, victimization of women and</p> <p>23 girls. That covers a lot of different research</p> <p>24 areas; is that fair to say?</p> <p>25 A. That is fair to say.</p> <p style="text-align: center;">Page 25</p>	<p>1 Q. Okay. Do you consider yourself an expert on</p> <p>2 everything having to do with gender-based</p> <p>3 violence?</p> <p>4 A. I think that's kind of a hard question to ask</p> <p>5 without knowing a little bit more about, like, the</p> <p>6 specifics about that. So for context, I -- I do</p> <p>7 applied research and program evaluations, and so</p> <p>8 that tends to bring about a level of knowledge</p> <p>9 about, you know, certain programs or certain</p> <p>10 aspects of those programs. So I wouldn't say that</p> <p>11 those are the only things that I research. But,</p> <p>12 you know, there's certain areas or pockets, but</p> <p>13 I've published and done research and evaluations</p> <p>14 for all, you know, human trafficking, intimate</p> <p>15 partner violence, domestic violence, and sexual</p> <p>16 assault.</p> <p>17 Q. So you mentioned that you do applied researching.</p> <p>18 Can you explain sort of the focus of your</p> <p>19 expertise within this sort of broad field of</p> <p>20 gender-based violence and victimization?</p> <p>21 A. Well, it -- primarily it has a lot to do with the</p> <p>22 grants that I have, or have had, as it relates to</p> <p>23 this. And so since, I don't know, the last eight</p> <p>24 or nine years, I've been -- my primary research</p> <p>25 scholarship has been -- or at least the biggest</p> <p style="text-align: center;">Page 26</p>
<p>1 chunk of it has been around sexual assault, and</p> <p>2 specifically sexual assault kits. But I would</p> <p>3 also say in general, like, I also have grants as</p> <p>4 it relates to violent crime and other -- and I</p> <p>5 teach a victimology course and I'm a criminology</p> <p>6 professor.</p> <p>7 So, like, you know, there's different</p> <p>8 levels to all of that. So I guess it really just</p> <p>9 makes a difference in terms of, like, what</p> <p>10 specifically about the topic. Because, again,</p> <p>11 sexual assault is very broad. So, you know, in</p> <p>12 what context; I primarily studied in that space.</p> <p>13 Q. So is it fair to say that within the field of</p> <p>14 sexual -- research on sexual assault, you have a</p> <p>15 lot of expertise around sexual assault kits,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. But you wouldn't say that you have the same level</p> <p>19 of knowledge about every other aspect of sexual</p> <p>20 assault?</p> <p>21 A. No, I wouldn't -- I don't think that's correct. I</p> <p>22 -- I would have a level of knowledge around sexual</p> <p>23 assault and in other ways. Because kits are one</p> <p>24 component but certainly I have expertise around</p> <p>25 many different aspects of sexual assault. Not</p> <p style="text-align: center;">Page 27</p>	<p>1 just kits.</p> <p>2 Q. Are there areas of sexual assault in which you</p> <p>3 don't do research?</p> <p>4 A. So I would say of the major areas and fields of</p> <p>5 sexual assault, I've never had -- I've never been</p> <p>6 funded to study campus sexual assaults. Although,</p> <p>7 I am very familiar with the literature on campus</p> <p>8 sexual assaults, as well as, you know, the Title</p> <p>9 IX process and all that sort of stuff. So I</p> <p>10 think -- I think it depends on if you're talking</p> <p>11 about what areas am I primarily publishing in</p> <p>12 or -- or have -- like, received grants to -- to</p> <p>13 study in versus my general understanding and</p> <p>14 knowledge as a scholar in the field. I think, you</p> <p>15 know -- I think all of that means I know the</p> <p>16 general knowledge of the field as it relates to</p> <p>17 sexual assault in a variety of areas.</p> <p>18 Q. When you say sexual assault, what do you mean by</p> <p>19 that?</p> <p>20 A. Sexual assault is usually used in the literature</p> <p>21 as a more expansive word than just rape. Which</p> <p>22 rape primarily has a -- has a more legal term to</p> <p>23 it. And sexual assault usually encompasses rape</p> <p>24 but can also include other aspects of -- of</p> <p>25 victimization within the -- the incident. As</p> <p style="text-align: center;">Page 28</p>

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<p>1 compared to say -- you know, which is not -- you</p> <p>2 know, like, so it's a broader term for that as</p> <p>3 compared to, like, sexual misconduct, which is a</p> <p>4 different term.</p> <p>5 Q. So how would you define sexual misconduct?</p> <p>6 A. Sexual misconduct usually encompasses -- it can</p> <p>7 encompass rape, sexual abuse, but also could be</p> <p>8 aspects of sexual harassment, and -- and/or, you</p> <p>9 know -- you know, inappropriate touching, those</p> <p>10 kinds of things.</p> <p>11 Q. And so your area of expertise is on sexual assault</p> <p>12 specifically rather than sex crimes -- all sex</p> <p>13 crimes or all sexual misconduct?</p> <p>14 A. I would say -- I would say my expertise would also</p> <p>15 lie in the better understanding of sexual abuse as</p> <p>16 well.</p> <p>17 Q. Have you published on noncontact sex offenses?</p> <p>18 A. I'm trying to think of would fit -- so I'm trying</p> <p>19 to -- so, like, peeping or internet-based crimes,</p> <p>20 ICAC sort of stuff. No, I have not published in</p> <p>21 that area.</p> <p>22 Q. Is it fair to say that your publications focus on</p> <p>23 sexual assault?</p> <p>24 A. They don't just focus on sexual assault.</p> <p>25 Q. What else do they cover?</p> <p style="text-align: center;">Page 29</p>	<p>1 A. Human trafficking, carjacking. I'm working on a</p> <p>2 paper on carjacking. I've published stuff</p> <p>3 around -- like, I've -- I'm on publications for,</p> <p>4 you know, how -- like, methodological papers</p> <p>5 around statistical assumptions of using spatial</p> <p>6 data. I've published -- and also, I'm sorry, can</p> <p>7 you have a general timeframe? Because it's --</p> <p>8 I've -- I've been a PhD for quite some time. So</p> <p>9 do you mean, like, maybe in the past five years,</p> <p>10 ten years, ever?</p> <p>11 Q. Ten years. Let's say past ten years.</p> <p>12 A. Let's see, I'm going to pull up my CV just to --</p> <p>13 just to clarify that and look at the past ten</p> <p>14 years. Yes, human trafficking. I've also</p> <p>15 published some stuff as it relates to sex -- to</p> <p>16 sex work. I've published some stuff as a</p> <p>17 methodologist around a program evaluation for</p> <p>18 rural pastors. I've published some stuff with a</p> <p>19 medical doctor on biomarkers and blood levels for</p> <p>20 adolescent trauma. Yeah, those -- those are the</p> <p>21 other areas.</p> <p>22 Q. Okay. And you're trained as a victimologist; is</p> <p>23 that correct?</p> <p>24 A. I specialize as a victimologist.</p> <p>25 Q. And that's the aspect of sexual assault that</p> <p style="text-align: center;">Page 30</p>
<p>1 you're -- when you're looking at sexual assault,</p> <p>2 you focus on a victimology basis; is that fair?</p> <p>3 A. It's really the -- the way to really think about</p> <p>4 it is that, like, there's -- there's sociology,</p> <p>5 which is the very general, that's what my PhD is</p> <p>6 in, right? The general discipline. Criminology</p> <p>7 is a subsection of sociology, which specializes in</p> <p>8 criminology and/or criminal justice.</p> <p>9 And then within criminology and criminal</p> <p>10 justice, there is a specialization for looking at</p> <p>11 the victims as well. I wouldn't say I only look</p> <p>12 at and study victim -- the victimology component.</p> <p>13 But yes, that's a -- that is a specialization</p> <p>14 within criminology.</p> <p>15 Q. And then within victim -- it's really helpful to</p> <p>16 have that sort of low, sort of down -- within</p> <p>17 victimology, are there particular sort of</p> <p>18 sub-areas of -- well, what are the kind of areas</p> <p>19 of study within victimology?</p> <p>20 A. It -- it certainly -- I mean, there's a variety of</p> <p>21 areas. Some could be international comparisons of</p> <p>22 victimology, which I don't do. But it's primarily</p> <p>23 based around the types of victim -- the types of</p> <p>24 crimes that people are victims of.</p> <p>25 So it could be, you know, like -- it</p> <p style="text-align: center;">Page 31</p>	<p>1 could be, you know, financial crimes. It could be</p> <p>2 internet crimes. It could be -- it could be</p> <p>3 intimate partner violence. It could be sexual</p> <p>4 assault. It could be homicide.</p> <p>5 So you're sort of looking at the</p> <p>6 different types of crime. But from -- you know,</p> <p>7 from the, you know, trends and patterns as it</p> <p>8 relates to being a victim of that type of crime.</p> <p>9 Q. And so within victimology, as I understand it, you</p> <p>10 focus on sexual assault, intimate partner</p> <p>11 violence, and human trafficking?</p> <p>12 A. And domestic violence.</p> <p>13 Q. Okay.</p> <p>14 A. The -- I'm sorry, the distinction there is that</p> <p>15 domestic violence is usually used as a broader</p> <p>16 term for, you know, just violence within the</p> <p>17 household or with household -- or individuals</p> <p>18 within a household. Whereas, intimate partner</p> <p>19 violence is violence between a couple or someone</p> <p>20 who has a romantic relationship. So a child can</p> <p>21 also be a perpetrator of domestic violence if</p> <p>22 they're within that sort of household. So a more</p> <p>23 general term is domestic violence.</p> <p>24 Q. Okay. So, I mean, it's interesting that you're</p> <p>25 talking about terms and then one of the things</p> <p style="text-align: center;">Page 32</p>

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<p>1 that you talk about in your declaration is just 2 the importance of terminology. And so when we're 3 talking today, I want to make sure that when we 4 use -- when I use certain terms or you use certain 5 terms, we both know what we're talking about. So 6 let's talk about kind of what the meanings of 7 these are.</p> <p>8 We just started talking about sexual 9 assault as a topic of your research and what you 10 mean by that. And I believe you said that it's -- 11 let me see. It's a more expansive term than rape, 12 perhaps more of a legal term than sexual assault, 13 encompasses rape but also some other aspects of -- 14 that sort of go beyond the technical legal 15 definition of rape; is that accurate?</p> <p>16 A. That's accurate.</p> <p>17 Q. Okay. So a sexual assault, would that include 18 offenses where both parties are willing to engage 19 in sexual activity?</p> <p>20 A. So one of the things I actually teach in my class 21 are -- is the difference -- I teach a victimology 22 course -- is to have the students really think 23 through the difference between what a statute 24 says, what a criminal statute says as in terms of 25 the definition. And those often and frequently</p> <p style="text-align: center;">Page 33</p>	<p>1 don't match up with what the -- the field of 2 victimology might describe as a -- as a term for 3 describing the nature of that crime.</p> <p>4 Q. Okay.</p> <p>5 A. So there's a different -- right. So, like, 6 there's a criminal statute for what you're 7 describing would be, you know, sort of 8 statutory -- a traditional statutory rape; where 9 consent is not the issue in so much as the age 10 difference and whether someone could -- or age or 11 some other variable that made it to where one 12 person couldn't give consent in that case because 13 of age or because of disability, or mental 14 impairment, or something like that.</p> <p>15 Which is different than something around, 16 like, a drug or alcohol facilitated sexual 17 assault. Those are kind of terms, but those don't 18 necessarily match up with the statute -- a 19 criminal statute.</p> <p>20 Q. Right. But when you're talking about sexual 21 assault, just to make sure that we're talking 22 about the same thing. When you're talking about 23 sexual assault, are you including something, like, 24 gross indecency where people are, you know, having 25 sex in the park together? They both --</p> <p style="text-align: center;">Page 34</p>
<p>1 A. Oh.</p> <p>2 Q. They both want to do it but they're -- it's still 3 a crime.</p> <p>4 A. By and large, no, those would not be considered 5 sexual assault. That's not the -- that wouldn't 6 be considered sexual assault. So sexual assault, 7 whether there's penetration or not, is usually 8 what most people think of rape, they're thinking 9 of penetration. Sexual assault could involve 10 penetration -- forced penetration or coerced 11 penetration but also could involve other aspects 12 or attempted sexual assaults or other things.</p> <p>13 But, no --</p> <p>14 Q. But --</p> <p>15 A. The only issue would be when there wasn't 16 consent -- like consent, you know, let's say 17 between a 14-year-old -- or let's say 13-year-old 18 and an 18-year-old, both of them, you know, 19 consented to the act but one of them couldn't 20 consent because of their age. That would be 21 considered sexual assault as compared to, like, 22 public indecency, someone having sex under the 23 bridge and that would be -- you know, that 24 wouldn't be considered as part of the sexual 25 assault -- you know, the general umbrella of</p> <p style="text-align: center;">Page 35</p>	<p>1 sexual assault.</p> <p>2 Q. So when you talk about sexual assault, would you 3 include the 15-year-old who's sleeping with the 4 17-year-old? Is that a sexual assault in your -- 5 as you define sexual assault in your report?</p> <p>6 A. No. And in our data -- well, it depends on the 7 criminal statute. For us, we define -- we do have 8 those cases we see in the rape -- in our data and 9 we did not code or consider -- you know, like, 10 again, this is -- this is based on the data that I 11 have and the data I published, that if -- it 12 depends upon -- in Ohio statute, based upon what 13 would qualify as a statutory rape versus, you 14 know, between a 15 and 17-year-old is not -- is 15 not -- because of the Romeo and Juliet laws, 16 that's not illegal. It's not a crime in Ohio.</p> <p>17 Q. Okay.</p> <p>18 A. Romeo and --</p> <p>19 Q. It is a crime in Michigan.</p> <p>20 A. Okay.</p> <p>21 Q. But let's -- I want to make sure I'm 22 understanding. When you use the term "sexual 23 assault" in your report, when you say sexual 24 assault, do you include the Romeo and Juliet cases 25 where there is consensual sexual activity but one</p> <p style="text-align: center;">Page 36</p>

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<p>1 of the partners is -- or not -- where there is</p> <p>2 willing sexual activity but one of the partners is</p> <p>3 under age. Would you include that in your</p> <p>4 definition of sexual assault?</p> <p>5 A. Only -- yes, but only in the cases where consent</p> <p>6 cannot be provided due to the age or it's outside</p> <p>7 of that Romeo and Juliet law. So in Ohio, if</p> <p>8 someone was under the age of 13, it's -- you know,</p> <p>9 and there's sexual contact, there's that --</p> <p>10 there's that under 13, which -- or 13 and under</p> <p>11 that makes it, like -- like, you know, it doesn't</p> <p>12 matter if they were consenting. If the child was</p> <p>13 13, they can't get consent to have sex with</p> <p>14 someone who's 20.</p> <p>15 The age of consent is 15 in Ohio but --</p> <p>16 but the Romeo and Juliet laws would say 15 to 17,</p> <p>17 in your example, is not considered -- you know,</p> <p>18 it's not considered rape because of the Romeo and</p> <p>19 Juliet laws in Ohio. So when I teach -- actually</p> <p>20 my college students, you would be surprised that</p> <p>21 they're very interested to know all about what</p> <p>22 makes which age and things like that based upon</p> <p>23 the age of the perpetrator and the age of the</p> <p>24 victim. And then there's a whole bunch of</p> <p>25 different statutes around that.</p> <p style="text-align: center;">Page 37</p>	<p>1 Now the only difference to that would</p> <p>2 be -- and also in Ohio, it -- and it's maybe</p> <p>3 similar in Michigan, it -- that Romeo and Juliet</p> <p>4 stuff doesn't matter as much if someone is in a</p> <p>5 position of authority or power over that person.</p> <p>6 Then, like, a teacher or other sorts of things.</p> <p>7 So let's say someone is, you know, 16 or 15 with</p> <p>8 an adult, and then someone's in a position of</p> <p>9 power, then...</p> <p>10 Q. Okay. Just so I'm understanding you, you're</p> <p>11 saying that if it is a crime under the law, you</p> <p>12 would include it as sexual assault?</p> <p>13 A. Yes, as long as the victim said that they were --</p> <p>14 so in some cases, we did not code for cases where</p> <p>15 let's say the victim always said it was consensual</p> <p>16 and the victim -- I'll give a she pronoun because</p> <p>17 almost all the victims in our data are female.</p> <p>18 And that's true for sexual assault in general. If</p> <p>19 she always said it was consensual and she's of age</p> <p>20 to be able to do that and it didn't fit within the</p> <p>21 crime statutes, then we didn't code that as doing</p> <p>22 that.</p> <p>23 So for example, if someone, you know,</p> <p>24 found out their daughter was having sex, took them</p> <p>25 to the hospital to get an exam. The victim said,</p> <p style="text-align: center;">Page 38</p>
<p>1 "No, no, no, he's my boyfriend. I had consensual</p> <p>2 sex with him."</p> <p>3 I'm -- you know, it's -- he's whatever</p> <p>4 age but it's not a crime, then we didn't code</p> <p>5 that. Because she never said that she was raped</p> <p>6 and it didn't fit within the statute for statutory</p> <p>7 rape.</p> <p>8 Q. But you would consider it a sexual assault if</p> <p>9 someone was underage, willing to have sex but it's</p> <p>10 a crime for that because of the age difference, it</p> <p>11 would be a crime?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So to give you an example, one of the</p> <p>14 plaintiffs in our case met a young woman at an</p> <p>15 over 18 club. They hit it off, they had sex.</p> <p>16 Turns out she wasn't 18 even though, you know,</p> <p>17 she's got a fake ID and turned out she was 15.</p> <p>18 That is a crime in Michigan. And would you</p> <p>19 consider that a sexual assault?</p> <p>20 A. I'm going to write down the facts of it -- that --</p> <p>21 MR. DAMICH: I'm also going to object to</p> <p>22 asking for a legal conclusion.</p> <p>23 MS. AUKERMAN: I'm asking whether -- as</p> <p>24 she uses the term "sexual assault," whether</p> <p>25 that's -- she would consider that a sexual</p> <p style="text-align: center;">Page 39</p>	<p>1 assault.</p> <p>2 MR. DAMICH: Noted.</p> <p>3 THE WITNESS: Okay. So in this case --</p> <p>4 I'm just going through because these are the sort</p> <p>5 of criteria under which we make determinations</p> <p>6 about whether to include them in our database.</p> <p>7 So the victim says it was consensual the</p> <p>8 whole time?</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Yes.</p> <p>11 A. It doesn't say. Is this -- I'll call them the</p> <p>12 suspect. Is the suspect in a position of</p> <p>13 authority or power over that individual?</p> <p>14 Q. No.</p> <p>15 A. Okay. And the victim is 15?</p> <p>16 Q. The victim is 15.</p> <p>17 A. And the suspect is how old?</p> <p>18 Q. I believe he was 19.</p> <p>19 A. The victim's not able to give -- you know, at</p> <p>20 least in Ohio, wouldn't be able to give consent</p> <p>21 because she's under the age of 16. And if over</p> <p>22 19, we would include in our database because of</p> <p>23 the age difference, that would be considered a</p> <p>24 potential for a crime. I -- I'm not a prosecutor,</p> <p>25 but I believe prosecutors have to make other</p> <p style="text-align: center;">Page 40</p>

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<p>1 decisions around there are other, like, legal</p> <p>2 things that they have to prove as -- as part of</p> <p>3 that.</p> <p>4 But that's not necessarily what we</p> <p>5 concern ourselves with of, like, the different</p> <p>6 proving statutes because, you know, we're not</p> <p>7 looking at it like a prosecutor would. We're not</p> <p>8 charging anyone with that, we're just coding a</p> <p>9 case. But if the -- but that would be considered</p> <p>10 a crime in Ohio, a 15 and 19 because the victim's</p> <p>11 under the age of 16.</p> <p>12 Q. So when you use the term "sexual assault" in your</p> <p>13 report, you're including examples like the one I</p> <p>14 just gave, that would, in your mind, qualify as a</p> <p>15 sexual assault?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. What about sodomy? Gay sex.</p> <p>18 MR. DAMICH: Objection --</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. You may answer.</p> <p>21 (9:58 a.m., Court Stenographer</p> <p>22 clarification.)</p> <p>23 MR. DAMICH: Calls for a legal</p> <p>24 conclusion. Form and foundation.</p> <p>25 THE WITNESS: So let me make sure that I</p> <p style="text-align: center;">Page 41</p>	<p>1 understand. I mean, so sodomy -- sodomy laws were</p> <p>2 primarily used, as I'm sure you know, a reason to</p> <p>3 criminalize sexual behavior between men. Most of</p> <p>4 the time, consensual. So are you -- but -- but</p> <p>5 that's not -- most of that, at least in Ohio, has</p> <p>6 -- that doesn't qualify as a crime.</p> <p>7 Sodomy is not a -- sodomy, you know,</p> <p>8 would be included in rape in terms of forced</p> <p>9 penetration. So penetration of any orifice. So</p> <p>10 the fact that -- so are you saying two consenting</p> <p>11 adults?</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. I'm talking about consensual sodomy, whether or</p> <p>14 not that -- I mean, that has in the past been</p> <p>15 illegal. Would you consider that to be, at the</p> <p>16 time that it was illegal, would that have been a</p> <p>17 sexual assault?</p> <p>18 MR. DAMICH: Form. Foundation.</p> <p>19 THE WITNESS: Yeah, I -- I can't answer</p> <p>20 that because that -- that isn't really something</p> <p>21 that we would have -- that's nothing that I would</p> <p>22 have had to work through or have that sort of</p> <p>23 definition as part of our data, is -- is that</p> <p>24 hasn't come up.</p> <p>25 BY MS. AUKERMAN:</p> <p style="text-align: center;">Page 42</p>
<p>1 Q. What about prostitution, is that a sexual assault?</p> <p>2 MR. DAMICH: Objection. Form.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: So, and by prostitution,</p> <p>5 you mean someone, although it is illegal to do it,</p> <p>6 someone who is willing to have sex with somebody</p> <p>7 for an exchange of money or goods or services or</p> <p>8 some aspect of that but willingly? Like --</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Yes, willingly having sex in exchange for some</p> <p>11 type of compensation.</p> <p>12 A. And that the willing exchange didn't turn into,</p> <p>13 you know, something that the person was unwilling</p> <p>14 to do.</p> <p>15 Q. Correct.</p> <p>16 A. Because we see that in our data as well, sex</p> <p>17 workers --</p> <p>18 Q. But we're talking only about cases where someone</p> <p>19 is willing to have sex in return for compensation.</p> <p>20 Is that --</p> <p>21 A. And the terms didn't change within the act, right?</p> <p>22 So, "I'm willing to do this for that," and then</p> <p>23 they get into the --</p> <p>24 Q. Right.</p> <p>25 A. And then he does --</p> <p style="text-align: center;">Page 43</p>	<p>1 Q. What I'm trying to do here, Dr. Lovell, is I'm</p> <p>2 trying to understand what you mean by sexual</p> <p>3 assault, and so I'm trying to understand what the</p> <p>4 boundaries are. So it sounds like it's not --</p> <p>5 you're saying that it's when someone is</p> <p>6 unwilling -- you know, there's some kind of</p> <p>7 unwillingness in the sexual act or it is a crime</p> <p>8 because the person isn't old enough to consent.</p> <p>9 Now, I'm talking about other types of</p> <p>10 cases where there's a consent to engage in the act</p> <p>11 but the person is of age and the person's of age</p> <p>12 to consent, like prostitution.</p> <p>13 A. So --</p> <p>14 MR. DAMICH: Just object to form and</p> <p>15 foundation.</p> <p>16 THE WITNESS: Sorry, go ahead.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. So let me clarify that question.</p> <p>19 So would you consider prostitution the</p> <p>20 willing exchange of sexual activity for</p> <p>21 compensation to be a sexual assault?</p> <p>22 MR. DAMICH: Objection. Form. Form.</p> <p>23 Calls for a legal conclusion.</p> <p>24 THE WITNESS: In the sense of, like,</p> <p>25 the -- the person paying for the sex committed a</p> <p style="text-align: center;">Page 44</p>

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<p>1 sex act -- or a sexual assault?</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. The person who is offering the sex act, as you use</p> <p>4 the term sexual assault in your declaration, is</p> <p>5 the person committing a sex act, in exchange for</p> <p>6 money, is that a sexual assault?</p> <p>7 MR. DAMICH: Same objection.</p> <p>8 THE WITNESS: So the person selling, I</p> <p>9 would not -- the person selling, I would not</p> <p>10 consider if that was -- if it was consensual and</p> <p>11 there's all those other conditions we talked</p> <p>12 about, not age, not incapacity, mental impairment,</p> <p>13 you know, drug or alcohol facilitated types of</p> <p>14 things that would -- but we're just all in the up</p> <p>15 and up consent. The person buying and the person</p> <p>16 selling would not be considered sexual assault</p> <p>17 under the -- under the definitions here or under</p> <p>18 the -- the -- the approved or, in general, the --</p> <p>19 how sexual assault is used in the literature.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Okay. So let's talk about -- so for sexual</p> <p>22 assault, would you include unwanted sexual contact</p> <p>23 that does not involve touching of a person's</p> <p>24 genitals or breasts?</p> <p>25 MR. DAMICH: Objection. Form and</p> <p style="text-align: center;">Page 45</p>	<p>1 foundation.</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. So for example, unwanted kissing, is that a sexual</p> <p>4 assault?</p> <p>5 MR. DAMICH: Same objection.</p> <p>6 THE WITNESS: Most of the time in the</p> <p>7 literature -- well, I'll start by saying, in our</p> <p>8 data, those are not decisions we often have to</p> <p>9 make in that, A, those cases are very rarely</p> <p>10 reported. And two, you know, it's not in the</p> <p>11 aspects of, like, you know, sexual assaults,</p> <p>12 especially with sexual assault kits. But in that</p> <p>13 case, I -- I think I -- you know, in the</p> <p>14 literature as well as -- as well as in, you know,</p> <p>15 the general approach, that would be considered</p> <p>16 more sexual misconduct.</p> <p>17 Most of the time sexual assault, again,</p> <p>18 has to do with a lack of consent or ability to</p> <p>19 provide consent along with penetration, attempted</p> <p>20 penetration, or, you know, touching of the genital</p> <p>21 areas.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. So sexual assault would be unwanted penetration,</p> <p>24 attempted penetration, or touching of genital</p> <p>25 areas?</p> <p style="text-align: center;">Page 46</p>
<p>1 A. Primarily, yes. But there is an -- I mean, it is</p> <p>2 very important to talk about definitions. And</p> <p>3 there are -- there is a -- I think I did cite it</p> <p>4 in here -- I can confirm -- but there is -- yeah,</p> <p>5 I did cite it. There is a -- the most commonly</p> <p>6 used survey, it's a prevalence survey done by the</p> <p>7 CDC and they lay out very specific terms of</p> <p>8 including, "This is what we mean by sexual</p> <p>9 coercion, this is what we mean by sexual assault</p> <p>10 and rape," and so and so.</p> <p>11 So, like, in general, the literature also</p> <p>12 follows that -- those sorts of approaches. Again,</p> <p>13 state statutes often don't match up necessarily</p> <p>14 with the -- the terms that we use, or there could</p> <p>15 be multiple, you know, like, criminal statutes</p> <p>16 that could go with one act. But there's a --</p> <p>17 there is a literature that is very well cited and</p> <p>18 very well used in this space specifically as it</p> <p>19 relates to -- to sexual contact, sexual</p> <p>20 misconduct, sexual assault, and rape.</p> <p>21 Q. So is it fair to say there's a distinction between</p> <p>22 sexual assault and sexual misconduct, those are</p> <p>23 two different things, correct?</p> <p>24 A. Yes. Yeah.</p> <p>25 Q. Okay. And your research is on -- the SAK research</p> <p style="text-align: center;">Page 47</p>	<p>1 that you did is on sexual assault?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What about, would you consider noncontact</p> <p>4 offenses -- so if -- let me rephrase that.</p> <p>5 If sexual assault involves penetration --</p> <p>6 attempted penetration or unwanted touching to</p> <p>7 sexual areas, genital areas, a noncontact offense</p> <p>8 is not a sexual assault, correct?</p> <p>9 MR. DAMICH: Objection. Form.</p> <p>10 Foundation.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. You can answer.</p> <p>13 A. I'm trying to make sure -- can you repeat the</p> <p>14 question? Just so...</p> <p>15 Q. Sure. So a noncontact offense where there is no</p> <p>16 physical contact with -- between people, would not</p> <p>17 be a sexual assault, correct?</p> <p>18 MR. DAMICH: Same objection.</p> <p>19 THE WITNESS: Okay. Sorry. A noncontact</p> <p>20 sexual offense?</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. Yeah, a noncontact sexual offense.</p> <p>23 A. Right. So let's -- I just want to make sure, for</p> <p>24 example, something like child porn, distributing</p> <p>25 of sexually -- you know, material, peeping Toms,</p> <p style="text-align: center;">Page 48</p>

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<p>1 those kinds of nonsexual contact types of things</p> <p>2 would in most -- it would not be -- I would not</p> <p>3 consider those sexual assaults, and the literature</p> <p>4 would not as well.</p> <p>5 Q. And those types of offenses are not covered in</p> <p>6 your research, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Sexual assault would not include offenses</p> <p>9 that don't have a sexual component, correct?</p> <p>10 MR. DAMICH: Objection. Form.</p> <p>11 Foundation.</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. So let me give you an example. So kidnapping,</p> <p>14 sometimes it has a sexual component, sometimes it</p> <p>15 doesn't, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Is a kidnapping without any sexual component a</p> <p>18 sexual assault?</p> <p>19 MR. DAMICH: Objection. Form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: In Ohio, kidnapping is</p> <p>22 frequently charged -- and I think it's called an</p> <p>23 allied or -- ali -- something offense. Where it's</p> <p>24 frequently charged with -- when there is a sexual</p> <p>25 assault, kidnapping is usually added as a charge</p> <p style="text-align: center;">Page 49</p>	<p>1 for that. And so you'll see frequently, like,</p> <p>2 rape, kidnapping because as part of the act of</p> <p>3 rape, you're also meeting the definition of</p> <p>4 kidnapping.</p> <p>5 But if there was just kidnapping and no</p> <p>6 -- and there was -- there's no hint or act or</p> <p>7 attempt to -- you know, to sexually assault,</p> <p>8 touch, grope genital areas, penetration, attempted</p> <p>9 penetration, then no, that would not be considered</p> <p>10 sexual assault.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Okay. So your report also used the term "repeat</p> <p>13 sexual offending," which you define as engaging in</p> <p>14 a sexually based crime and then engaging in a</p> <p>15 subsequent sexually based crime and a separate</p> <p>16 incident regardless of being caught for either, or</p> <p>17 both, or all offenses, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. When you say a subsequent sexually based</p> <p>20 crime, subsequent to what?</p> <p>21 A. The first.</p> <p>22 Q. So if a person commits -- if a person commits a</p> <p>23 sexual offense more than once, you would consider</p> <p>24 that person a repeat offender, correct?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 50</p>
<p>1 Q. You're not measuring repeat offending from the</p> <p>2 point when the person is first convicted, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. So you're measuring whether the person has</p> <p>5 committed more than one offense, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So let's take an example. We have a person</p> <p>8 who's convicted of one sex offense. They've never</p> <p>9 been re-convicted. And let's say, just</p> <p>10 hypothetically, we know to 100 percent certainty</p> <p>11 that they never re-offend. That person would --</p> <p>12 is not a repeat offender, correct?</p> <p>13 MR. DAMICH: Objection. Form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Okay. Let's go through the</p> <p>16 scenario again. So let's say someone is --</p> <p>17 commits, or is convicted of, or arrested for?</p> <p>18 BY MS. AUKERMAN:</p> <p>19 Q. They're convicted of a sex offense and then they</p> <p>20 never get convicted and they never commit another</p> <p>21 sex offense.</p> <p>22 A. Never convicted nor -- and we know 100 percent</p> <p>23 certain that they never even attempted or did</p> <p>24 anything --</p> <p>25 Q. Yep.</p> <p style="text-align: center;">Page 51</p>	<p>1 A. -- else to commit that -- no, then they would not</p> <p>2 be a repeat sexual offender.</p> <p>3 Q. Okay. Because they've only offended once, so</p> <p>4 they're not a repeat offender, correct?</p> <p>5 A. Correct.</p> <p>6 Q. So let's take a second example. We have a person</p> <p>7 who's convicted of one sex offense and it turns</p> <p>8 out that they've also committed two additional sex</p> <p>9 offenses, that person would be a repeat offender,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 MR. DAMICH: Objection. Form.</p> <p>13 Foundation.</p> <p>14 BY MS. AUKERMAN:</p> <p>15 Q. And that person is a repeat offender whether or</p> <p>16 not they get caught for crimes two or three,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 MR. DAMICH: Same objection.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. And -- okay.</p> <p>22 Let's take a third example. We have a</p> <p>23 person who engages in three acts of sexual abuse</p> <p>24 against the same victim over the course of a year.</p> <p>25 They're then caught and convicted but they never</p> <p style="text-align: center;">Page 52</p>

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<p>1 re-offend after conviction. Is that person a</p> <p>2 repeat offender as you use the term?</p> <p>3 MR. DAMICH: Objection. Form and</p> <p>4 foundation.</p> <p>5 THE WITNESS: So serial or repeat</p> <p>6 offending in the literature as well as in my</p> <p>7 declaration is defined, it can be the same victim.</p> <p>8 But if they're in multiple incidents, then those</p> <p>9 are separate crimes. So separate incidents,</p> <p>10 meaning you would be picking at more than one. So</p> <p>11 if you raped the same victim in the same act</p> <p>12 twice, criminally, you can be charged with a</p> <p>13 different amount of counts. But in the</p> <p>14 literature, they would -- and I, you know, would</p> <p>15 consider that person a repeat offender because</p> <p>16 they had done -- they've raped even -- even if</p> <p>17 it's the same victim, they have repeatedly</p> <p>18 sexually assaulted or sexually abused, however we</p> <p>19 want to say it, that person in separate incidents.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Okay. So if someone engages in multiple, let's</p> <p>22 say two sex crimes, we know that they've committed</p> <p>23 two sex crimes, and then they're convicted. We</p> <p>24 can make this two separate victims. That person,</p> <p>25 in your view, is a repeat offender, correct?</p> <p style="text-align: center;">Page 53</p>	<p>1 MR. DAMICH: Objection. Form and</p> <p>2 foundation.</p> <p>3 THE WITNESS: They've been convicted once</p> <p>4 but they have two separate victims and two</p> <p>5 separate incidents?</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. Correct.</p> <p>8 A. Yes, that person would be a repeat sexual</p> <p>9 offender.</p> <p>10 Q. And that's true even if both of those offenses</p> <p>11 predate the conviction?</p> <p>12 A. Correct.</p> <p>13 MR. DAMICH: Objection. Form.</p> <p>14 Foundation.</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. You can answer.</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So when you say repeat sexual offending,</p> <p>19 what you're measuring is whether someone committed</p> <p>20 more than one offense, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you're not measuring whether someone has</p> <p>23 re-offended after conviction, correct?</p> <p>24 A. Can you repeat that -- the second part?</p> <p>25 Q. The measurement is not limited to whether a person</p> <p style="text-align: center;">Page 54</p>
<p>1 has committed another offense after conviction,</p> <p>2 correct?</p> <p>3 A. They could have but it's not contingent upon the</p> <p>4 second conviction.</p> <p>5 Q. Okay. But a person could be a repeat offender if</p> <p>6 in -- as you use the term "repeat offender," all</p> <p>7 of the offenses could predate the conviction and</p> <p>8 the person is still a repeat offender, correct?</p> <p>9 A. Correct. And -- and by the same token, someone</p> <p>10 could get a conviction and then continue to offend</p> <p>11 after that and they would be a repeat offender as</p> <p>12 well.</p> <p>13 Q. Okay. So one of the things that -- are you aware</p> <p>14 that this litigation is about people who have been</p> <p>15 convicted, and as a result, are on the Sex</p> <p>16 Offender Registry?</p> <p>17 A. I assume because it -- because I read this -- the</p> <p>18 declarations that it was about the Sex Offender</p> <p>19 Registry, so I assumed it had something to do with</p> <p>20 people who are on the registry.</p> <p>21 Q. So one of the things we're interested in</p> <p>22 understanding is how likely people are to commit a</p> <p>23 new sex offense after being convicted of a prior</p> <p>24 sex offense.</p> <p>25 What term would you use for re-offending</p> <p style="text-align: center;">Page 55</p>	<p>1 after conviction?</p> <p>2 A. Re-offending after conviction? Re-offend --</p> <p>3 MR. DAMICH: Objection. Calls for a</p> <p>4 legal conclusion.</p> <p>5 But go ahead. Sorry.</p> <p>6 THE WITNESS: Sorry.</p> <p>7 I would call it re-offending.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. But didn't you just testify that when someone is</p> <p>10 re-offending, you're not limiting that to after</p> <p>11 conviction?</p> <p>12 A. If I understood your question, it was, like,</p> <p>13 here's the conviction, someone -- someone -- after</p> <p>14 conviction, someone commits another crime, I would</p> <p>15 call that re-offending. If you're saying here's a</p> <p>16 conviction-based into which someone was convicted</p> <p>17 again for the same type of crime, that would be</p> <p>18 recidivism.</p> <p>19 Q. So what I'm trying to understand is, would you</p> <p>20 agree that there's a difference -- so someone</p> <p>21 commits three offenses let's say. Okay. They</p> <p>22 commit three offenses. That person, in your view,</p> <p>23 is a repeat offender regardless of whether they're</p> <p>24 convicted, correct?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 56</p>

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<p>1 MR. DAMICH: Form and foundation.</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. And the person who commits three offenses is a</p> <p>4 repeat offender regardless of whether those</p> <p>5 offenses occur prior to conviction, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And they're a repeat offender if those offenses</p> <p>8 occur -- if the second and third offenses occur</p> <p>9 after conviction for the first offense, correct?</p> <p>10 A. Correct.</p> <p>11 Q. What I'm trying to understand is, what is the</p> <p>12 terminology we can use to distinguish between the</p> <p>13 people who re-offend after conviction and the</p> <p>14 people who commit multiple offenses prior to</p> <p>15 conviction?</p> <p>16 MR. DAMICH: Form and foundation.</p> <p>17 THE WITNESS: I think the issue is -- has</p> <p>18 to -- well, in all cases, it's -- it's just a</p> <p>19 matter of what term you want to use for that. So</p> <p>20 recidivism is how a lot of the studies -- and, you</p> <p>21 know -- you know, especially sexual recidivism is</p> <p>22 being caught, right, and convicted or arrested.</p> <p>23 But mostly, it's being convicted once and then</p> <p>24 being either arrested or convicted for a</p> <p>25 subsequent one.</p> <p style="text-align: center;">Page 57</p>	<p>1 I think when you're looking at offending</p> <p>2 behavior, which is what the research -- the --</p> <p>3 that I cite and the research that I do looks at,</p> <p>4 is that we're interested in -- we're looking not</p> <p>5 at, like, what -- what time period did they do</p> <p>6 this and they do that. You're looking at their</p> <p>7 full behavior across the lifespan. So you're</p> <p>8 looking at what types of crimes did they commit</p> <p>9 across their lifespan regardless of when the</p> <p>10 convictions happened in those cases.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. So your research doesn't look at when people</p> <p>13 offend in relation to when they've been convicted,</p> <p>14 correct?</p> <p>15 A. I do have a study that's under review that does</p> <p>16 look at -- it does look at repeat sexual</p> <p>17 offending. And we are able to see, you know,</p> <p>18 what's their first -- what's their first sexual</p> <p>19 offense that they have. Over 50 percent of those</p> <p>20 were convicted, and then what ends up happening</p> <p>21 after that. And we do see, you know, how many</p> <p>22 percentage of those, like, went on to commit other</p> <p>23 ones. But -- but -- but that's not the</p> <p>24 traditional, like, recidivism research that's</p> <p>25 cited in those declarations.</p> <p style="text-align: center;">Page 58</p>
<p>1 Q. Do some scholars use the term recidivism to mean</p> <p>2 re-offending after conviction?</p> <p>3 A. If they do, they would be incorrect because it's</p> <p>4 not re-offending. It's getting caught again.</p> <p>5 Q. So just so that we can be talking about the same</p> <p>6 thing here. Your report does not include -- you</p> <p>7 provide a series of definitions, but your report</p> <p>8 does not include a separate term for re-offending</p> <p>9 after conviction, correct?</p> <p>10 A. That would just be re-offending. It'd be repeat</p> <p>11 offending. That would fit the definition of</p> <p>12 whether the person was caught or not. If they --</p> <p>13 so part -- because recidivism is a measure of</p> <p>14 behavior, but it's also a measure of the extent of</p> <p>15 reporting adjudication in the criminal justice</p> <p>16 system and other things. So it's not --</p> <p>17 recidivism is not a measure of just behavior. So</p> <p>18 repeat sexual offending is a measure of -- of</p> <p>19 behavior, not incorporating this into which</p> <p>20 victims report and the extent to which the case</p> <p>21 becomes adjudicated. So --</p> <p>22 Q. So when you say "recidivism," what you're talking</p> <p>23 about is people being caught a second time or</p> <p>24 additional times in the criminal justice system?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 59</p>	<p>1 Q. Correct.</p> <p>2 And when you're talking about</p> <p>3 re-offending, you're talking about how many times</p> <p>4 people commit an offense, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. But you don't have a term that relates to</p> <p>7 how many times people commit an offense after</p> <p>8 being convicted?</p> <p>9 A. That would be repeat sexual offending. So that --</p> <p>10 Q. But repeat sexual offending, you have also</p> <p>11 included offending prior to conviction, correct?</p> <p>12 A. Right. So it would just -- so there -- so it</p> <p>13 would be all of that. So --</p> <p>14 Q. So for repeat sexual offending, you include</p> <p>15 behavior before conviction and behavior after</p> <p>16 conviction. You don't make a distinction,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 A. Although, I do have data on that but that's not</p> <p>21 what that term is meant to use.</p> <p>22 Q. Okay. So just so that we're clear as we're</p> <p>23 talking today, if at any point you want to talk</p> <p>24 about sexual offending after conviction</p> <p>25 separately, just use that terminology sexual</p> <p style="text-align: center;">Page 60</p>

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<p>1 re-offending after conviction so that we know that</p> <p>2 you're not talking about re-offending broadly.</p> <p>3 A. Okay. Sure.</p> <p>4 Q. Okay. You also use the term "sexual offender."</p> <p>5 Who do you consider -- when you use the term</p> <p>6 "sexual offender," who do you mean by that?</p> <p>7 A. It's a general term for someone who has committed</p> <p>8 a sexually based crime.</p> <p>9 Q. So are you restricting that to people who</p> <p>10 committed rapes or sexual assaults?</p> <p>11 A. No, I -- I primarily use that -- and I do</p> <p>12 distinguish in my publications if we're talking</p> <p>13 about sexual assault offending, and that's a</p> <p>14 specific type of sexual offending versus sexual</p> <p>15 offending in more general, which might include a</p> <p>16 variety of different types of sexually based</p> <p>17 crimes.</p> <p>18 Q. So when you use the term sexual offender, are you</p> <p>19 referring to anyone who commits a sexual crime?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Do you ever use the term sexual offender as</p> <p>22 a shorthand or the sample -- the people in the</p> <p>23 sample in your research?</p> <p>24 A. I have, yeah. So sometimes it can be a short-hand</p> <p>25 for -- for a sexual offender. But the -- in the</p> <p style="text-align: center;">Page 61</p>	<p>1 context of the publications, the data and methods</p> <p>2 lay out that -- what we're talking about are, you</p> <p>3 know, those connected to sexual assault kits.</p> <p>4 So...</p> <p>5 Q. So when you're using it as a shorthand when you</p> <p>6 say sex offender, you mean the people who are</p> <p>7 associated with the sexual assault kits?</p> <p>8 A. In my publications, yes.</p> <p>9 Q. And in your report when you use the term sexual</p> <p>10 offend, are you referring to anyone committed --</p> <p>11 who's convicted of a sexual crime or the people</p> <p>12 associated with --</p> <p>13 A. Yeah, so -- yeah, so, just to be more general.</p> <p>14 Yeah, so I cite -- when I'm talking about my data,</p> <p>15 I use the term sexual assault offender. When I'm</p> <p>16 talking about sexual offenders in general using</p> <p>17 the term sexual offender or repeat sexual offender</p> <p>18 and not adding in the assault component of that.</p> <p>19 Q. So sometimes in the report you're using sexual</p> <p>20 offender to mean the people in your data and</p> <p>21 sometimes you're using it to mean anybody</p> <p>22 convicted of a sex crime, correct?</p> <p>23 A. Incorrect. The -- in the -- in the report when it</p> <p>24 says sexual offender, that's the broad category</p> <p>25 under which -- you know, encompasses a variety of</p> <p style="text-align: center;">Page 62</p>
<p>1 sex crimes. And then sexual assault offenders,</p> <p>2 more specifically to those connected to sexual</p> <p>3 assaults specifically.</p> <p>4 Q. So let's look at just -- I want to make sure I'm</p> <p>5 clear. Let me share my screen here. Looking at</p> <p>6 your report in 9(b).</p> <p>7 A. Um-hum.</p> <p>8 Q. You discuss your research and you talk about a</p> <p>9 number of -- in (b)(i) you talk about 1,270</p> <p>10 samples to suspected sexual offenders.</p> <p>11 When you say sexual offenders there, you</p> <p>12 mean people associated with the SAKs. You don't</p> <p>13 mean people convicted of every sex crime, correct?</p> <p>14 A. Correct. Right.</p> <p>15 Q. Okay. Okay.</p> <p>16 All right. I'm showing you an article</p> <p>17 that you wrote on dissemination impact amplified.</p> <p>18 Do you recognize this article? Let me scroll up</p> <p>19 here if I can. Oh, I guess I haven't shared it</p> <p>20 yet, so that would help. Have you read this</p> <p>21 article?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MS. AUKERMAN: And we'll make this</p> <p>25 Exhibit 3 here.</p> <p style="text-align: center;">Page 63</p>	<p>1 (At 10:27 a.m., Exhibit 3 marked.)</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. And you write here that the, [as read], "Public's</p> <p>4 media consumption strongly impacts their</p> <p>5 understanding of crime and justice, often noting</p> <p>6 that the public's perception rarely matches the</p> <p>7 reality. This is especially true with sex crimes</p> <p>8 where the more sensational crimes are prominent</p> <p>9 and disproportionately focused on violent sex</p> <p>10 crimes committed by strangers and on the actions</p> <p>11 of the victim and the crime."</p> <p>12 Would you agree with that statement?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And would you agree that in the decision</p> <p>15 making about preventing sexual offending, we</p> <p>16 should be focused on the facts and not on public</p> <p>17 perceptions about sensational sex crimes?</p> <p>18 A. No, I would not agree with that statement.</p> <p>19 Q. Okay. Would you agree that in the decision making</p> <p>20 about preventing sexual offending we should focus</p> <p>21 on the facts?</p> <p>22 I guess what I'm asking is, --</p> <p>23 A. Yeah.</p> <p>24 Q. -- do you believe in evidence based --</p> <p>25 evidenced-based approaches to sexual offending?</p> <p style="text-align: center;">Page 64</p>

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<p>1 A. Yeah, as a -- as a general approach. I think the 2 question is whose evidence and who -- you know, 3 like, for example, you know, victims, while it may 4 be evidence based, victims are often written and 5 reported about around all the actions -- like I 6 said here, that, like, led up to that, that lead 7 victims to be blamed. So while it is -- 8 Q. Sure, but -- right. Right. But what I'm asking 9 about is whether -- I mean, it seems like you've 10 dedicated your career to research that will inform 11 evidence-based responses to sexual violence, 12 correct? 13 A. Correct. 14 Q. And trying to understand what the data and what 15 the research shows us? 16 A. Correct. 17 Q. Right. Okay. 18 I mean, preparing for this deposition, I 19 found your research incredibly interesting because 20 it seems to really improve our understanding of 21 and ways to respond to sexual assault, and your 22 work seems to be really creative. 23 In a number of pieces, you wrote that 24 your work is unique or novel. Is your work unique 25 or novel?</p> <p style="text-align: center;">Page 65</p>	<p>1 A. Yes. 2 Q. What's novel about your work? 3 A. The sexual assault kits certainly make the -- the 4 information that we have from this novel because 5 of -- because of the opportunities that sexual 6 assault kits provide for us to be able to examine 7 sexual offending. 8 Q. Is it fair to say that not many people have done 9 the kind of research that you've done? 10 A. That's correct. 11 Q. Okay. Your report mentions I believe just one 12 other study in Wayne County; is that correct? 13 A. Correct. 14 Q. Are you aware of any other studies that look at 15 repeat sexual offending based on sexual assault 16 kits? 17 A. There -- well, we wrote -- I recently wrote a 18 book. It's an edited book. As far as I'm aware, 19 our study, along with Detroit's from Wayne County, 20 are the only ones that have -- other people have 21 looked at sexual offending and, you know, sort of 22 aspects of repeat sexual offending. 23 But the reason why I cited ours too is 24 because they're -- they're pretty comparable in a 25 number of meaningful ways. So I really can</p> <p style="text-align: center;">Page 66</p>
<p>1 compare the two in a sense because we've measured 2 things very similarly. We have similar 3 jurisdictions. 4 There's similar things of how they 5 approached it. Like, there's a lot of 6 similarities between Wayne County and Cuyahoga 7 County in how they did their sexual assault kits. 8 So that's one way to compare. 9 But certainly, like, for example, the 10 Sexual Assault Kit Initiative itself keeps federal 11 data on whether the suspects are -- are serial 12 offenders or have -- you know, are known to be a 13 sexual offender. So certainly, we're not the only 14 two people who have those metrics, but that's -- 15 the reason I cited it is because I'm comparing 16 their, like, two similar metrics that can be 17 compared. 18 Q. When you say that -- well, are there other 19 published studies that look at SAK based research 20 on repeat offending? 21 A. Kansas did some work on that. I don't think it 22 was ever published in a journal but has been 23 disseminated broadly. The Kansas Bureau of 24 Investigation did some really interesting stuff 25 with sexual offenders. They're no longer a SAKI</p> <p style="text-align: center;">Page 67</p>	<p>1 site, I believe, because they finished, but they 2 did some for -- for some time. I'm trying to 3 think because now there's some 80 different sites 4 for SAKI. 5 Q. So to your knowledge though that the two -- your 6 study and the Wayne study are the two published 7 studies -- two published peer-reviewed studies 8 related to SAKs and repeat offending, correct? 9 A. Yes, I believe so. 10 Q. So, I mean, is it fair to say that you're sort of, 11 you know, on the cutting edge of this area of 12 research? 13 A. Correct. Yeah. 14 Q. Okay. It's kind of uncharted -- 15 A. Me along with Wayne County. I don't want to -- 16 Q. Yeah. 17 A. They've been doing great work too. Yeah. 18 Q. Yeah. Reading your work, it seems like SAKs are 19 an important way to uncover -- well, let me say 20 this differently. 21 It seems like your work identifies ways 22 in which we can more successfully use DNA evidence 23 to identify, investigate, and then prosecute 24 people who commit sexual offenses; is that fair to 25 say?</p> <p style="text-align: center;">Page 68</p>

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<p>1 A. Yeah, certainly, that DNA leads that but not all 2 the cases in Cuyahoga County that they worked 3 through have DNA. So it's also broader than 4 just -- so it's not -- DNA isn't the only 5 component. But how it can be used in conjunction 6 with a more improved response from the criminal 7 justice system and from individuals in the 8 criminal justice system to, you know, have a 9 better response to sexual assault.</p> <p>10 Q. Right. And your work suggests a variety of ways 11 in which we can improve responses -- we can better 12 ensure accountability for people who are 13 committing sexual offenses, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And would you agree that to prevent 16 victimization, we should be investing in the kinds 17 of evidence-based approaches that, you know, you 18 and others talk about as being effective in 19 reducing victimization and ensuring 20 accountability?</p> <p>21 A. Correct.</p> <p>22 Q. All right. Let's talk a little bit -- I want to 23 get to re-offending, but I want to talk about 24 recidivism as you define it, first in terms of 25 getting caught again. So let's start with talking</p> <p style="text-align: center;">Page 69</p>	<p>1 about that.</p> <p>2 You define sexual recidivism in your 3 report, it's paragraph 4(a), as being caught by 4 the criminal justice system once and then being 5 caught by the criminal justice system at least one 6 more time, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then in paragraph 7(d), you write that, 9 [as read], "A recently released meta-analysis on 10 sexual recidivism argues that a single rate of 11 sexual recidivism that can be applied to all 12 convicted sexual offenders, e.g., a true base rate 13 for sexual recidivism does not exist. Of the 808 14 empirical studies in their meta-analysis, the 15 reported sexual recidivism rate varied from zero 16 to 68 percent," correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And that meta-analysis was done by -- I'm 19 not sure if I'm pronouncing this correctly -- 20 Lussier and colleagues, correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. Do you agree with the statement that 23 there's no one rate for sexual recidivism?</p> <p>24 A. Correct. In the sense of, like, a true -- the 25 true -- a true number or something that -- you</p> <p style="text-align: center;">Page 70</p>
<p>1 know, like, a true rate for heart attacks or a 2 true rate for other sorts of things. Because you 3 are working with the criminal justice system, and 4 since sexual recidivism is a measure of behavior 5 as well as reporting rates, and adjudication and 6 the criminal justice response to it. And it 7 varies a lot by the size, how long we study them, 8 what crimes you're looking at; that there isn't 9 really, like, one true number. Although, there 10 are good studies that have, you know, good 11 estimates of that number.</p> <p>12 Q. So the recidivism rate, the detection rate, the 13 getting caught rate, that varies, you said, by 14 what population you're looking at, the amount of 15 time you're looking at the person at the sample, 16 that kind of thing, correct?</p> <p>17 A. As well as what caught means. Like arrest, 18 conviction.</p> <p>19 Q. Right. Okay.</p> <p>20 (At 10:38 a.m., Exhibit 4 marked.)</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. So let me just pull up the study that you cited, 23 the Lussier study.</p> <p>24 So Lussier writes that -- writes that, 25 [as read], "the base rate of recidivism can vary</p> <p style="text-align: center;">Page 71</p>	<p>1 drastically with changes in parameters, such as 2 the measurement criteria selected, the length of 3 the follow-up period, and the nature of the 4 sample, etc."</p> <p>5 Do you agree with that statement?</p> <p>6 A. Agree.</p> <p>7 Q. And then later on, Lussier writes, [as read], 8 "Sexual offending encompasses a wide range of 9 behaviors that range from gross indecency to 10 sexually motivated homicide and include diverse 11 behaviors such as child pornography (production, 12 usage), rape and sexual assault, and child sexual 13 abuse and sexual exploitation that vary in terms 14 of the nature, frequency, context, intrusiveness, 15 and level of violence and harm. Even a legally 16 defined crime such as sexual assault can vary 17 along various dimensions (e.g., level of 18 violence, level of physical injuries, use of a 19 weapon, presence of accomplices, length of time 20 over which the offense occurred.) This wide range 21 is lost in the aggregate measure, sexual 22 recidivism."</p> <p>23 Would you agree with that statement?</p> <p>24 A. I -- I don't know that I completely agree with 25 the -- the idea there that sexual assault -- that</p> <p style="text-align: center;">Page 72</p>

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<p>1 legal definitions vary dramatically by, like, use 2 of a weapon or presence of accomplices. But 3 the -- but the idea -- I think what he's -- or 4 they are trying to say is that, like, even the 5 idea of sexual assault, that there's variation 6 within that idea of sexual assault or how, you 7 know, like, quote -- like, these are air quotes. 8 So, air quote, bad the sexual assault can be. 9 Yeah, that there's -- there's variation within, 10 for example, rapes, right? I think that's -- 11 Q. I think, as I understand this quote, the point is 12 that there are a variety of different behaviors 13 that make up sexual offending. And that an 14 aggregate measure of sexual recidivism is -- loses 15 the wide diversity of offenses that result in -- 16 that are sex crimes; is that correct? 17 A. Yeah, I would say that there's variation within 18 the population of sexual offenders. 19 Q. Right. And so an aggregate number of sexual 20 recidivism is inaccurate because it doesn't 21 account for that variation of the population? 22 A. I would say it is accurate if you've made it clear 23 as to exactly what -- what's included in that 24 term. So for example, the Feds, Bureau of Justice 25 Statistics is the -- one of the major cited</p> <p style="text-align: center;">Page 73</p>	<p>1 articles. Everywhere in here that I talk about, 2 like, what -- you know, the eight percent 3 recidivism. It's on, let's see, 7 -- 7(e) where 4 that large US -- "a large representative sample of 5 prisoners released from 30 states in 2005 and 6 followed for nine years post-release." 7 So in that study, they give very 8 specific, like, definitions of all those things. 9 So I think in that case -- like, if -- if it's all 10 laid out as to exactly what you're including in 11 that and how many years and who's that, then I 12 think you can kind of start to come up with 13 comparable measures over time. But I think -- I 14 think you can when you -- when it's laid out as to 15 exactly what you're measuring and how you're 16 measuring it and who you're measuring. 17 Q. But you have to lay out what the time period is, 18 what population we're talking about when we're 19 talking about recidivism. That matters in the 20 rate; is that accurate? 21 A. Correct. Correct. 22 Q. And you mentioned I believe the Bureau of Justice 23 Statistics? 24 A. Correct. 25 Q. And that's a -- is that a widely regarded source</p> <p style="text-align: center;">Page 74</p>
<p>1 for crime and victimization data? 2 A. Correct. Yeah. 3 Q. Are they sort of the gold standard for that? 4 A. Correct. Yeah. 5 Q. Okay. Let's stop sharing this. 6 So let's talk about the difference 7 between sexual recidivism and sexual re-offending. 8 Sexual recidivism, as you used that term in your 9 report, counts only offenses where a person is 10 caught in the criminal justice system, right? 11 A. Correct. 12 Q. Okay. Would you agree that because people who are 13 convicted have gone through the criminal legal 14 system, we can have a fair degree of confidence 15 that they committed the offense that they were 16 convicted of? 17 A. Yes, with -- with a degree of error in there of 18 course. But yes. 19 Q. Right. There's some wrongful conviction cases but 20 a conviction represents a decision by the legal 21 system that the person did what they were accused 22 of doing, right? 23 A. Correct. 24 Q. Okay. But you point out in your declaration that 25 conviction-based recidivism rates understate the</p> <p style="text-align: center;">Page 75</p>	<p>1 true amount of offending because we know that as a 2 result of underreporting and case attrition, there 3 are offenses that happen that don't result in 4 conviction, right? 5 A. Correct. 6 Q. Okay. So let me make sure I understand. As I 7 understand, there's three main reasons why 8 conviction-based recidivism data undercounts the 9 true rate of sexual offending. So I want to make 10 sure I'm understanding this correctly. 11 So first, many sexual crimes are not 12 reported, correct? 13 A. Correct. 14 Q. So that offense is never detected by the criminal 15 justice system? 16 A. Correct. And there's variation in the different 17 types of sex crimes and their reporting rates. 18 Q. So different types of sex crimes will have 19 different reporting? 20 A. Correct. 21 Q. Okay. And then a crime might be reported, but it 22 doesn't lead to an arrest, correct? 23 A. More often than not it doesn't lead to an arrest. 24 Q. Okay. And then third, a person might be arrested 25 but they're not convicted for the sex offense,</p> <p style="text-align: center;">Page 76</p>

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<p>1 correct?</p> <p>2 A. Correct. Or they're convicted but it doesn't show</p> <p>3 up as a sex offense because it's pled down to</p> <p>4 something else.</p> <p>5 Q. Okay. Right.</p> <p>6 So for that third reason only, studies --</p> <p>7 do some studies measure recidivism based on</p> <p>8 arrests?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So that would account for that third</p> <p>11 reason. Not the first two, but the third reason?</p> <p>12 A. Correct. Yeah, so the -- the Bureau of Justice</p> <p>13 statistics, the one that I cited, they define it</p> <p>14 as the -- the subsequent one is an arrest or a</p> <p>15 conviction for a sexually based crime.</p> <p>16 Q. Would you agree that if we measure re-offending in</p> <p>17 ways other than relying on convictions, that may</p> <p>18 address some of the issues with underreporting and</p> <p>19 case attrition?</p> <p>20 A. Arrest could be a more encompassing way to measure</p> <p>21 sexual offending, yes.</p> <p>22 Q. And then other types, you talk about</p> <p>23 self-reporting, you talk about the SAK data.</p> <p>24 There's other ways of trying to figure out what</p> <p>25 re-offense rates are without looking at whether a</p> <p style="text-align: center;">Page 77</p>	<p>1 person got caught, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Now when a victim reports a crime, there's</p> <p>4 a variety of reasons why a person might not be</p> <p>5 convicted, right?</p> <p>6 A. Correct.</p> <p>7 Q. So it might be because the police blame the victim</p> <p>8 or don't believe the victim or there's amiss that</p> <p>9 the police have about -- and assumptions about</p> <p>10 victims, right? That could be a reason they're</p> <p>11 not -- the person is not -- the case is not</p> <p>12 pursued, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. The police might do an inadequate</p> <p>15 investigation, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Or the prosecutor might think, "I'm not going to</p> <p>18 pursue this because I don't think I can get a</p> <p>19 conviction," correct?</p> <p>20 A. Correct.</p> <p>21 Q. Or it could be because the investigation -- there</p> <p>22 was an investigation but it showed that there</p> <p>23 wasn't a crime, correct?</p> <p>24 A. Correct. Well, those would be unfounded, but yes.</p> <p>25 Q. So that could be unfounded. Or it could be</p> <p style="text-align: center;">Page 78</p>
<p>1 because a jury acquitted the defendant. The case</p> <p>2 went to trial but the jury believed the defendant,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. So is it fair to say that when we use non</p> <p>6 conviction-based measures of re-offending, there's</p> <p>7 been no legal determination that the person did</p> <p>8 what they were accused of doing, correct?</p> <p>9 A. Correct. You're -- you're balancing there the --</p> <p>10 the difference between false reporting versus, you</p> <p>11 know -- or sort of standards of evidence. So if</p> <p>12 you're at conviction, it's beyond a reasonable</p> <p>13 doubt versus, you know, at a time of report under</p> <p>14 which there's a presumption, right, of certain</p> <p>15 things. So I think there's different assumptions</p> <p>16 at different parts of that --</p> <p>17 Q. Right.</p> <p>18 A. -- and how careful you are with saying --</p> <p>19 Q. Sure. So conviction-based measures don't address</p> <p>20 unreported cases or case attrition, correct?</p> <p>21 A. Correct.</p> <p>22 Q. But non conviction-based measures aren't premised</p> <p>23 on a legal certainty that the person committed the</p> <p>24 offense, correct?</p> <p>25 A. Yeah, typically beyond a reasonable doubt.</p> <p style="text-align: center;">Page 79</p>	<p>1 Q. Okay.</p> <p>2 A. There's other cases where that wouldn't be the</p> <p>3 case.</p> <p>4 Q. So let's look at paragraph 6 of your report. You</p> <p>5 say that, [as read], "Sexual recidivism research</p> <p>6 based on official, court/administrative research</p> <p>7 from criminal justice agencies provides biased and</p> <p>8 unrepresentative estimates of repeat sexual</p> <p>9 offending."</p> <p>10 Are you suggesting that the scholars who</p> <p>11 do recidivism research are biased?</p> <p>12 A. No.</p> <p>13 Q. And the recidivism research measures reconviction</p> <p>14 rates. So it would be representative of</p> <p>15 reconviction rates, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So when you say unrepresentative, what you mean is</p> <p>18 that it's incomplete because it doesn't account</p> <p>19 for undetected offending or criminal justice</p> <p>20 system attrition, correct?</p> <p>21 A. Correct, that often in sexual recidivism research,</p> <p>22 they shorthand or use the term to reflect</p> <p>23 behavior. Not -- not -- they -- they don't</p> <p>24 reflect, you know -- they -- they mean -- what</p> <p>25 they say is they haven't committed another offense</p> <p style="text-align: center;">Page 80</p>

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<p>1 but what they really mean is they haven't got 2 caught for the other offense. Right. 3 Q. But you're not questioning the integrity of that 4 research with respect to having been caught? 5 A. No. No. 6 Q. Okay. So let's talk about determining -- you 7 know, your report distinguishes between sexual 8 recidivism and repeat sexual offending. So let's 9 talk about repeat sexual offending. 10 A. Okay. 11 Q. Let me show you an article. So this is an 12 article, this is I think Exhibit 5. 13 (At 10:51 a.m., Exhibit 5 marked.) 14 BY MS. AUKERMAN: 15 Q. "Offending histories and typologies of suspected 16 sexual offenders identified via untested sexual 17 assault kits." And you were one of the authors of 18 this article, correct? 19 A. Correct. 20 Q. Okay. 21 Okay. So this is -- you write, [as 22 read], "Estimates vary greatly as to how prevalent 23 repeated sexual offending is." Correct? 24 A. Correct. 25 Q. And do you still agree with that statement?</p> <p style="text-align: center;">Page 81</p>	<p>1 A. Correct. 2 Q. So there's no academic consensus about how 3 prevalent repeat sexual offending is, correct? 4 A. Correct. It depends on how you know and what you 5 know and who you know about. 6 Q. Okay. And then you write, [as read], "This 7 variation primarily stems from the difficulty in 8 measuring repeat offending, especially among 9 sexual offenders." 10 So you would agree that measuring repeat 11 offending for people with past sex offenses is 12 difficult? 13 A. Extremely. 14 Q. Okay. And then you write that, [as read], "Data 15 that rely only on official criminal justice system 16 records are an undercount of re-offending, but 17 especially in the case of sexually based 18 re-offending. It is not known how great this 19 undercount is." Correct? 20 A. Correct. 21 Q. And you would still agree with that statement? 22 A. Correct. 23 Q. Okay. And then up here, going back up to page 24 471, you talk about the difficulty of measuring 25 repeat offending and you describe sort of three</p> <p style="text-align: center;">Page 82</p>
<p>1 ways -- you -- repeat offending estimates depend 2 upon three separate things. A, which population 3 is under observation. B, how offending and 4 re-offending is known and measured. And C, the 5 length of the follow-up period, correct? 6 A. Correct. 7 Q. Okay. So let's go through each of those factors. 8 So let's start with the population under 9 observation. 10 Is it accurate to say that the population 11 sample in which you do your research affects the 12 results? 13 A. Correct. 14 Q. Okay. So if you have two groups with different 15 characteristics, groups A and B and you do a study 16 on group A. You can't assume that the results for 17 group A are also true for group B, correct? 18 A. I -- 19 MR. DAMICH: Form. Foundation. 20 THE WITNESS: I think that's too vague 21 to -- to say that. 22 BY MS. AUKERMAN: 23 Q. Okay. So let's say that you have group A and they 24 have a certain set of characteristics, and group B 25 has different characteristics. Can you assume</p> <p style="text-align: center;">Page 83</p>	<p>1 that research on group A is also true for group B? 2 A. I think the -- I wouldn't characterize it that way 3 because that's -- like, you're talking about, 4 like, generalizable knowledge. So we rarely have 5 everything that's exactly the same in this group, 6 it's going to be exactly the same. Michigan is 7 different from Ohio, but guess what, Michigan and 8 Ohio are actually quite similar in a number of 9 ways, right? Like, they're dissimilar in some 10 ways, they're similar in other ways. Can you say 11 that they're exactly the same? No. Can you say 12 they have maybe similar characteristics that you 13 could generalize something? Yes. Is there a 14 preponderance of evidence over time that would 15 make them comparable? Yes. Like so -- I -- I 16 think -- I think that's just too general of a 17 statement to -- to affirm either way if we're 18 talking about science. 19 Q. But you would -- 20 A. I have specifics. 21 Q. Right. But you would agree that you have to look 22 at the similarities and differences between the 23 groups to know whether or not you can generalize 24 out? 25 A. You would -- you would have to be clear or have an</p> <p style="text-align: center;">Page 84</p>

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<p>1 understanding of how the groups might be different 2 and how they might be similar, so that the reader 3 can make inferences about, you know, how -- how 4 and where to generalize. 5 Q. And you've talked about how with sexual re-offense 6 rates, the estimates for re-offense will depend on 7 the group at issue, correct? 8 A. Correct. 9 Q. Okay. So when you're looking at research on 10 re-offending or recidivism, you have to take into 11 account things like younger people may have higher 12 offense rates than older people, correct? Yes? I 13 think she froze. 14 A. [Audio distorted.] 15 Q. Sorry, you cut out for a second. 16 A. Oh, I'm sorry. 17 Q. Can you -- 18 A. Yeah, sorry. The answer's -- yeah, that's a major 19 criminological principle, the age crime curve. 20 Q. Can you tell us what the age crime curve is? 21 A. It's the idea that -- that, you know, like, when 22 people are younger, they're more likely to commit 23 crimes, a variety of crimes, most crimes. And 24 that at some point, you know, the -- the 25 propensity to commit crime decreases as</p> <p style="text-align: center;">Page 85</p>	<p>1 individuals age. 2 Q. And has that been true in your research on sexual 3 offending as well? 4 A. Yes, but as we -- I think even in that paper that 5 you just pulled up, we talk about the sexual 6 offenders. In our study and in other studies 7 don't follow that same age crime curve and 8 continue to sexually offend later in their life 9 cycle than other types of crime. 10 Q. Does sexual offending drop off over time? 11 A. It does drop off over time. 12 Q. And as people age? 13 A. Correct. 14 Q. Okay. And when we talk about, so taking into 15 account differences. If you're doing research on 16 a group of people who were federally committed for 17 dangerous past sexual conduct and you were 18 comparing them to people who were convicted of 19 having sex with an underage girlfriend or 20 boyfriend, might you expect to see different 21 re-offense rates? 22 A. I think -- 23 MR. DAMICH: Object to form and 24 foundation. 25 THE WITNESS: I haven't -- I don't know</p> <p style="text-align: center;">Page 86</p>
<p>1 of any studies or didn't cite any studies of -- of 2 that but do I -- do I -- I guess -- like do I -- 3 do you want me to sort of just make a 4 generalization from the literature or what 5 might -- would be considered? Because that's not 6 really something I've published of looking at 7 civil committed and what their recidivism rates 8 are and so forth. 9 BY MS. AUKERMAN: 10 Q. I guess what I'm asking is, I mean, it doesn't 11 sound like you have experience on recidivism or 12 re-offense rates for different populations, 13 correct? 14 A. Correct. 15 Q. But you would agree that different populations 16 might have different re-offense rates? 17 A. Correct. I would agree with that, yes. 18 Q. Okay. And so, like, research on people who were 19 sent to prison might have different results than 20 research on people who got probation? 21 A. Yeah, in so much as it's based on the severity of 22 the crime. 23 Q. Okay. 24 A. But, again, like, against what they're caught for 25 may not necessarily represent their full offending</p> <p style="text-align: center;">Page 87</p>	<p>1 behavior. But yeah. 2 Q. Okay. I mean, the broad point is that the 3 population you study could affect the re-offense 4 rates? 5 A. Correct. 6 Q. All right. So returning to the article we were 7 just looking at. This is Exhibit 5. This is your 8 offending histories article. 9 You write that, [as read], "The longer 10 sexual offenders go without getting rearrested for 11 a sexually based offense, the less likely they are 12 to get rearrested for another such offense." 13 Correct? 14 A. Well, I'm citing actually Hanson, the one that 15 is -- that I read the -- the declaration for. So 16 I'm citing his work. I'm -- I'm citing -- I 17 didn't do that study, but I'm citing his as 18 finding that, yes. 19 Q. Okay. You cited it as something that you agree 20 with? 21 A. Correct. 22 Q. Okay. And then at the bottom of page 472, you 23 write, [as read], "heterogeneity is common among 24 sexual offenders." Do you still agree with that 25 statement?</p> <p style="text-align: center;">Page 88</p>

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<p>1 A. Yes, in -- in the context of -- but this paper is</p> <p>2 in the context of typologies. Like --</p> <p>3 Q. So there's different types of sex offenders,</p> <p>4 correct?</p> <p>5 A. Well, most of my research, and this one and</p> <p>6 others, are looking at that there's a lot more</p> <p>7 diversity in their offending behaviors. So my</p> <p>8 studies aren't looking necessarily at, like, you</p> <p>9 know, people -- to which, like, peeping Toms are</p> <p>10 also, you know, doing sex offenses. But looking</p> <p>11 at of those connected to a sexual assault through</p> <p>12 a sexual assault kit, how diverse is their</p> <p>13 offending behavior? Are they just really more</p> <p>14 rapists who will rape or sexually assault in a</p> <p>15 variety of ways with a variety of different</p> <p>16 victims, aspects of victims and other sorts of</p> <p>17 things. Or are they sort of sticking to a type?</p> <p>18 And so this is the article about trying to see</p> <p>19 that they're, like --</p> <p>20 Q. Right. Okay.</p> <p>21 A. There's just one type of person. We -- you know,</p> <p>22 we do find a lot of that actually do cross over</p> <p>23 between adults and --</p> <p>24 Q. Right. So what I'm -- okay. That's sort of not</p> <p>25 -- this is kind of outside of the scope of what</p> <p style="text-align: center;">Page 89</p>	<p>1 we're talking about here.</p> <p>2 A. Okay.</p> <p>3 Q. So I'm just conscious of the time because I want</p> <p>4 to make sure that we get through everything that</p> <p>5 we want to get through today. Okay.</p> <p>6 So you write at the bottom of page 43,</p> <p>7 [as read], "Our findings support prior research</p> <p>8 that indicates criminal offending is not evenly</p> <p>9 distributed so that some criminals offend with a</p> <p>10 high frequency."</p> <p>11 So, like, there's not an even</p> <p>12 distribution. Some people offend more, some</p> <p>13 people offend less, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then you say, [as read], "Even in a sample of</p> <p>16 disproportionately criminogenic offenders, our</p> <p>17 analysis finds almost a third of the offenders</p> <p>18 have ten plus arrests in their criminal history,</p> <p>19 and more than ten percent are in the top</p> <p>20 decile..."</p> <p>21 So you have even within a sample of</p> <p>22 disproportionately criminal offenders, you still</p> <p>23 have a concentration even within that, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And then on page 473, you write, [as read],</p> <p style="text-align: center;">Page 90</p>
<p>1 "Studies show that as sexual offenders age, their</p> <p>2 rates of desisting from sexual offending</p> <p>3 increase."</p> <p>4 Do you agree with that statement still?</p> <p>5 A. Correct. That's -- the research on that is...</p> <p>6 Q. Okay.</p> <p>7 All right. Let's look at --</p> <p>8 A. But again, our study -- that study also shows as</p> <p>9 well as others that, like, they go much further</p> <p>10 into their later years than -- so we --</p> <p>11 Q. But it drops off as they age even though -- it may</p> <p>12 not be the same age curve, but it is an age curve,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 (At 11:04 a.m., Exhibit 6 marked.)</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. All right. So let's look at -- I've shared, this</p> <p>19 is Exhibit 6. This is an article that you wrote</p> <p>20 on walking and waiting sexual assaults?</p> <p>21 A. Correct.</p> <p>22 Q. And in this article, you found -- let me see if I</p> <p>23 can find it. So this is an article where you</p> <p>24 looked at the suspects, the characteristics of</p> <p>25 suspects linked to walking-waiting sexual</p> <p style="text-align: center;">Page 91</p>	<p>1 assaults, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you were the coauthor of this article?</p> <p>4 A. I was the lead author.</p> <p>5 Q. Lead author. Okay.</p> <p>6 And you found that 57 percent were</p> <p>7 committed by people aged 18 to 30, right?</p> <p>8 A. Linked -- well, of those that committed were</p> <p>9 linked to walking-waiting?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, the 57.1 were between 18 and 30.</p> <p>12 Q. And then for between 51 and 60, you found it was</p> <p>13 1.8 percent who are linked to walking and waiting,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And for over 60, it was zero percent, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So it's fair to say that offenses -- this</p> <p>19 type of offense anyway, is -- it's fair to say</p> <p>20 that the walking and waiting offenses are more</p> <p>21 likely to be committed by people aged 18 to 30</p> <p>22 than people over 50, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. So we talked about -- sort of going back to</p> <p>25 kind of the three factors that one needs to</p> <p style="text-align: center;">Page 92</p>

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<p>1 consider in trying to understand the difficulty of</p> <p>2 measuring the offending. The first one was the</p> <p>3 population that we're looking at. And the second</p> <p>4 one you mention in your article is how</p> <p>5 re-offending is known and measured, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. When you say re-offending is known, do I</p> <p>8 correctly understand that you mean the way in</p> <p>9 which it's determined that more than one offense</p> <p>10 has been committed?</p> <p>11 A. Right. The information that would connect what</p> <p>12 kind of information connects someone to more than</p> <p>13 one.</p> <p>14 Q. So it could be known through, like, a contact with</p> <p>15 the criminal justice system, like an arrest or</p> <p>16 conviction, right?</p> <p>17 A. Correct.</p> <p>18 Q. And it could be known through self-reporting, like</p> <p>19 a polygraph or a self-reporting study?</p> <p>20 A. Right.</p> <p>21 Q. And it could be known through a DNA linkage, like</p> <p>22 the research that you're doing, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And as I understand you, the different ways</p> <p>25 that we find out or know about a second offense</p> <p style="text-align: center;">Page 93</p>	<p>1 might affect the results?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And when you say how re-offending is</p> <p>4 measured, do I correctly understand that to mean</p> <p>5 that there's different ways to measure what counts</p> <p>6 as re-offending?</p> <p>7 A. Correct.</p> <p>8 Q. So one way to measure might be how many times a</p> <p>9 person has committed more than one sexual offense,</p> <p>10 correct?</p> <p>11 A. Yes, the question would be how would we know that</p> <p>12 they committed -- were they a suspect in the</p> <p>13 crime? Were they arrested for the crime? Were</p> <p>14 they convicted of the crime? Were they linked by</p> <p>15 DNA and no one ever tested it?</p> <p>16 Q. Right. What I'm trying to get at, you talk about</p> <p>17 both known and measured here. You say how</p> <p>18 offending and re-offending is known and measured.</p> <p>19 So known is how you find out about it. And then</p> <p>20 the measured part is what you define as</p> <p>21 re-offending, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So re-offending could be defined as</p> <p>24 committing more than one offense, correct?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 94</p>
<p>1 Q. Or it could be defined as committing more than one</p> <p>2 offense after conviction, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And what you're measuring is the first, committing</p> <p>5 more than one offense, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And then the third factor that you talk</p> <p>8 about in terms of the difficulty of measuring</p> <p>9 repeat offending is the length of the follow-up</p> <p>10 period, right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. So when you're discussing re-offense rates,</p> <p>13 it's important to include a time period?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So it's fair to say you might get different</p> <p>16 rates if you measure re-offending from five years</p> <p>17 from release from prison compared to 20 years from</p> <p>18 release?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Is it also fair to say that you might get</p> <p>21 different rates if you measure re-offending in</p> <p>22 years one to five after release versus years 15 to</p> <p>23 20 after release?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p> <p style="text-align: center;">Page 95</p>	<p>1 All right. How are we doing? I wanted</p> <p>2 to start talking about the sexual assault kits.</p> <p>3 But I don't know if folks need a break. So do we</p> <p>4 want to take a break or do we want to keep going?</p> <p>5 A. Maybe -- I'd like maybe a five minute break.</p> <p>6 Q. Okay. Let's take a five minute break and come</p> <p>7 back at 11:15. Does that work?</p> <p>8 MR. DAMICH: Sure does.</p> <p>9 MS. AUKERMAN: Okay. Great. We'll be</p> <p>10 back at 11:15.</p> <p>11 (From 11:09 a.m. to 11:16 a.m. a break</p> <p>12 was held.)</p> <p>13 MS. AUKERMAN: So we're back on the</p> <p>14 record.</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. So I want to talk about the sexual assault kit</p> <p>17 issue and -- or really just understand more about</p> <p>18 how those -- starting off, sort of how those are</p> <p>19 collected?</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. So where are they collected? Is that done in</p> <p>22 hospitals?</p> <p>23 A. Primarily in hospitals, at least in the United</p> <p>24 States. They're primarily done in hospitals</p> <p>25 and/or some medical setting by medical</p> <p style="text-align: center;">Page 96</p>

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<p>1 professionals.</p> <p>2 Q. And so those are done by medical professionals,</p> <p>3 like nurses or people who are trained -- like who</p> <p>4 does them?</p> <p>5 A. So it could be -- primarily it's either ER doctors</p> <p>6 or doctors -- you know, ER or some type of, you</p> <p>7 know, emergency type of doctor. And increasingly</p> <p>8 more they're being collected from individuals,</p> <p>9 sexual assault nurse examiners who are nurses who</p> <p>10 get specialized training in forensic -- medical</p> <p>11 forensic exams, which the -- there's the exam and</p> <p>12 then the evidence that's collected is the kit.</p> <p>13 Q. Okay. And at the time that your research was</p> <p>14 being done, those exams were mostly being done by</p> <p>15 physicians; is that fair to say?</p> <p>16 A. I wouldn't say mostly but with a mix of -- of</p> <p>17 physicians as well as nurses and others. But</p> <p>18 usually those with -- or, like, nurse</p> <p>19 practitioners or, you know, like not -- not</p> <p>20 typically, like, you know, a cardiac nurse</p> <p>21 wouldn't necessarily -- who wasn't in the ER</p> <p>22 wouldn't necessarily collect those but...</p> <p>23 Q. And those were collected in hospitals, the ones in</p> <p>24 your research?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 97</p>	<p>1 Q. Okay. What does the process itself involve? Like</p> <p>2 how long does it take? Is it painful?</p> <p>3 A. It can vary dramatically based upon the age of the</p> <p>4 victim, as well as what the victim consents to</p> <p>5 having done as part of the exam. So, as well as</p> <p>6 injury -- other injuries that might be more --</p> <p>7 that require more immediate attention. So if --</p> <p>8 if someone comes in who's been sexually assaulted</p> <p>9 but is also injured, right, broken ribs and they</p> <p>10 have to go to X-ray for -- you know, so they have</p> <p>11 to attend to their medical needs first before</p> <p>12 doing the exam. But it can range from, you know,</p> <p>13 an hour to, you know, four, five, six hours.</p> <p>14 Q. And what is physically done during the exam?</p> <p>15 A. Again, it can vary dramatically based upon the age</p> <p>16 of the victim, as well as what the victim consents</p> <p>17 to. But typically, it involves collecting</p> <p>18 evidence -- forensic evidence from the bodies. So</p> <p>19 almost -- what's almost always collected for adult</p> <p>20 -- I'll just say adults, are fingernail clippings,</p> <p>21 swabs of bodily orifices and other parts of the</p> <p>22 body, which the victim said might be involved in</p> <p>23 the sexual assault. Like the neck or the breasts</p> <p>24 or other, you know -- combing of hair, collecting</p> <p>25 of clothing. And then that's the most typical</p> <p style="text-align: center;">Page 98</p>
<p>1 part of that, and then there's also variations in</p> <p>2 that. So it could also include photographic</p> <p>3 evidence. It could include, you know, other types</p> <p>4 of evidence collected as well.</p> <p>5 Q. Okay. And the combing of hair, the collection of</p> <p>6 -- that's all about -- collection of bodily</p> <p>7 fluids, that's all about trying to identify a</p> <p>8 source of DNA, correct?</p> <p>9 A. Or evidence, yeah. Right.</p> <p>10 Q. Okay. And --</p> <p>11 A. I'm sorry. I'll just clarify that it's also used</p> <p>12 as corroborating evidence, not just for the DNA.</p> <p>13 But it can be used as corroborating evidence. So,</p> <p>14 like, if the victim said, you know, "He licked my</p> <p>15 breast," and his DNA is found on her breast, so</p> <p>16 that could corroborate. So it's not just about</p> <p>17 the DNA, but also is the DNA kind of -- you know,</p> <p>18 where it should or could be based upon the account</p> <p>19 from the victim.</p> <p>20 Q. All right. So it might be identification, but</p> <p>21 even if the person's identified, the DNA -- even</p> <p>22 if the suspect is known, the DNA could be helpful</p> <p>23 in terms of establishing that a sexual assault</p> <p>24 occurred?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 99</p>	<p>1 Q. Okay. Let me go back to this article, the</p> <p>2 offending histories article.</p> <p>3 Okay. So you write here that for a SAK</p> <p>4 to hit -- for the SAKs to hit each other, several</p> <p>5 things have to happen. And then you set out six</p> <p>6 basically preconditions for the possibility of a</p> <p>7 SAK hit.</p> <p>8 So first, each sexual assault has to be</p> <p>9 recorded. It had to have a -- second, it had to</p> <p>10 have a SAK collected. Third, the SAK had to have</p> <p>11 enough evidence, had to have enough DNA from the</p> <p>12 offender for testing or the SAK had to be retained</p> <p>13 by law enforcement. Fifth, the SAK had to be</p> <p>14 submitted for testing. And the sixth, the SAK had</p> <p>15 to have enough DNA information to be eligible for</p> <p>16 entry into the DNA database, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Are there any other preconditions to getting a</p> <p>19 hit?</p> <p>20 A. So there is a little bit more -- this is a broader</p> <p>21 component. You could have more specificity as</p> <p>22 part of that. So you can actually get a sexual</p> <p>23 assault kit collected and not have it be reported</p> <p>24 to police. But in this case, it means, like, the</p> <p>25 victim had to, you know, go or get the kit</p> <p style="text-align: center;">Page 100</p>

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<p>1 collected.</p> <p>2 Like report to at least medical</p> <p>3 professionals. You don't necessarily have to</p> <p>4 report to police to get a sexual assault kit</p> <p>5 collected. And then -- so it had to have enough</p> <p>6 DNA and it had to be -- had to be eligible for --</p> <p>7 for entry into CODIS. Yeah, it had to be</p> <p>8 submitted -- oh, yeah, I did say that.</p> <p>9 Have enough, you know, DNA information to</p> <p>10 be eligible for entry. Yeah, so all of those</p> <p>11 things have to be there for a kit to -- to hit to</p> <p>12 each other.</p> <p>13 Q. Okay. And you mentioned that you could have a SAK</p> <p>14 collected and not report to the police. Was that</p> <p>15 true in Cleveland and Cuyahoga County when you</p> <p>16 were doing -- for the time period where you --</p> <p>17 that your research covers?</p> <p>18 A. Yes, it -- I mean, it is true -- it was true then.</p> <p>19 There are -- most of the victims did make a police</p> <p>20 report, at least an incident report. A small</p> <p>21 handful did not make an incident report or left</p> <p>22 before the police got there. But not -- part of</p> <p>23 our kits also have this, but even more so now,</p> <p>24 there's federal laws around anonymous kit</p> <p>25 collection. But, like --</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. Okay.</p> <p>2 A. -- you can get a kit but you don't have to put</p> <p>3 your name on it.</p> <p>4 Q. So the kits you tested -- or not tested yourself.</p> <p>5 The kits that you -- your research is based on</p> <p>6 included a small number where the person had the</p> <p>7 kit done but didn't report an assault?</p> <p>8 A. Correct. A small number, yeah.</p> <p>9 Q. Okay.</p> <p>10 All right. So let's talk about each of</p> <p>11 these preconditions. So the first one is that the</p> <p>12 case had to be reported. And obviously, not all</p> <p>13 sex crimes are reported, right? Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Yeah.</p> <p>16 I believe you testified earlier that</p> <p>17 there's certain types of sex offenses that are</p> <p>18 more likely to be reported than others, correct?</p> <p>19 A. Correct.</p> <p>20 Q. What are the sex offenses that are more likely to</p> <p>21 be reported?</p> <p>22 A. Rape, attempted rape, as well as more violent</p> <p>23 sexual offenses. And those where there's a</p> <p>24 possibility of knowing who the person is. So for</p> <p>25 example, you know, a peeping Tom, you know, if you</p> <p style="text-align: center;">Page 102</p>
<p>1 don't know who the -- who is peeping, then you</p> <p>2 can't really report that, right? But most of the</p> <p>3 time it's the more violent offenses.</p> <p>4 Q. Are offenses committed by strangers more likely to</p> <p>5 be reported?</p> <p>6 A. More likely to be reported than -- than what</p> <p>7 happens in the population, like in terms of</p> <p>8 incident rates?</p> <p>9 MR. DAMICH: Object to form and</p> <p>10 foundation.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. So is it more likely that a person who is sexually</p> <p>13 assaulted by a stranger will report that than</p> <p>14 someone who is sexually assaulted by someone known</p> <p>15 to them.</p> <p>16 A. Report to police?</p> <p>17 Q. Yes, report to police.</p> <p>18 A. Yeah. So -- so I'll say, stranger rapes are</p> <p>19 disproportionately reported to police, but don't</p> <p>20 make up the majority or the modal category. The</p> <p>21 modal category are acquaintances or recent</p> <p>22 acquaintances.</p> <p>23 Q. When you say modal category, what do you mean?</p> <p>24 A. I mean, the -- sorry, the category that has the</p> <p>25 most number.</p> <p style="text-align: center;">Page 103</p>	<p>1 Q. So the modal -- the most are acquaintances or</p> <p>2 recent acquaintances in terms of reporting?</p> <p>3 A. Of rapes.</p> <p>4 Q. Okay.</p> <p>5 Okay. And so offenses with strangers,</p> <p>6 offenses with violence, offenses rape, attempted</p> <p>7 rape, those are the -- those offenses are more</p> <p>8 likely to be reported, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Are there certain types of offenses that are less</p> <p>11 likely to be reported?</p> <p>12 A. Sexual offenses?</p> <p>13 Q. Yes, sexual offenses.</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Which ones?</p> <p>16 A. Sexual offenses where there's sexual misconduct,</p> <p>17 sexual harassment, which, in most cases, is not</p> <p>18 considered a crime. Offenses where there's --</p> <p>19 like where someone maybe doesn't know or quite</p> <p>20 know that they're a victim. So if you could think</p> <p>21 of, like, ICAC, internet crimes against children,</p> <p>22 or other sorts of things.</p> <p>23 You know, those sort of cases. Children</p> <p>24 sometimes -- increasingly it's getting better but</p> <p>25 children sometimes are -- are unaware of certain</p> <p style="text-align: center;">Page 104</p>

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<p>1 offenses being, you know, crimes. So, yeah, or,</p> <p>2 like, noncontact sexual offenses are less likely</p> <p>3 to be reported.</p> <p>4 Q. Okay. If a victim is concerned that she might not</p> <p>5 be believed, is that -- could that affect the</p> <p>6 likelihood of reporting?</p> <p>7 A. Yes.</p> <p>8 Q. And if the victim is concerned that law</p> <p>9 enforcement might think there was consent, could</p> <p>10 that affect the likelihood of reporting?</p> <p>11 A. Yes.</p> <p>12 Q. I spoke with a sexual assault hotline advocate the</p> <p>13 other day because I was trying to understand more</p> <p>14 about how all this works. And that person told</p> <p>15 me -- that person worked on a sexual assault</p> <p>16 hotline in 2007 to 2013, and told me that the</p> <p>17 majority of calls they got were from people who</p> <p>18 experienced an assault long ago but had never</p> <p>19 reported it. Does that sound right to you?</p> <p>20 MR. DAMICH: Object to form and</p> <p>21 foundation.</p> <p>22 THE WITNESS: That -- that is -- that is</p> <p>23 true. Most -- I work a lot with the Cleveland</p> <p>24 Rape Crisis Center as well, and I've done</p> <p>25 evaluations for them. And a lot of the victims</p> <p style="text-align: center;">Page 105</p>	<p>1 who, at least at the time are seeking supportive</p> <p>2 services, there can be a time period between the</p> <p>3 time that they were sexually assaulted and the</p> <p>4 time that they seek services. Especially if it</p> <p>5 wasn't reported.</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. And the advocate I spoke to also said that about</p> <p>8 50 percent of the calls that they receive were</p> <p>9 from people asking whether what they had</p> <p>10 experienced qualified as a sexual assault. So</p> <p>11 maybe both parties got drunk and the person felt</p> <p>12 pressured into having sex but didn't want to have</p> <p>13 sex until the person did -- is this a sexual</p> <p>14 assault or not. Does that sound right to you?</p> <p>15 MR. DAMICH: Object to form and</p> <p>16 foundation.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: Okay. Yeah, I -- I can't</p> <p>19 really -- I don't have information a lot -- I</p> <p>20 don't necessarily do research on that. I think</p> <p>21 the -- one of the reasons why some of the other</p> <p>22 sexual offenses aren't reported as much is</p> <p>23 because -- because people, you know, are trying to</p> <p>24 reconcile the legal and criminal codes with their</p> <p>25 experiences.</p> <p style="text-align: center;">Page 106</p>
<p>1 BY MS. AUKERMAN:</p> <p>2 Q. Right. And if someone is unsure whether the</p> <p>3 victimization that they experienced qualifies as a</p> <p>4 crime, might they be less likely to report that?</p> <p>5 MR. DAMICH: Objection. Form.</p> <p>6 Foundation.</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. You can answer.</p> <p>9 A. Correct.</p> <p>10 Q. And if there's an offense, a sex crime where both</p> <p>11 parties are willing participants, might that be</p> <p>12 less likely to be reported? So we talked before</p> <p>13 about prostitution, gross indecency, sexual</p> <p>14 activity with a willing partner who's underage.</p> <p>15 Would offenses like that where both parties are</p> <p>16 willing be less likely to be reported?</p> <p>17 MR. DAMICH: Objection to form.</p> <p>18 THE WITNESS: I would say correct unless</p> <p>19 there's some variation there about the age of the</p> <p>20 person. So, and in some cases, those might be</p> <p>21 because there's some guardian who -- or</p> <p>22 guardianship that would recognize that. But</p> <p>23 overall, yes, as a general.</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. Okay. So it's fair to say that there's some types</p> <p style="text-align: center;">Page 107</p>	<p>1 of sex crimes that are more likely to be reported</p> <p>2 than others, correct?</p> <p>3 MR. DAMICH: Objection. Form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. And it's fair to say that reports about certain</p> <p>8 types of sex crimes are also more likely to be</p> <p>9 believed than others?</p> <p>10 MR. DAMICH: Objection. Form and</p> <p>11 foundation.</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. That wasn't clear. Let me -- I can see from your</p> <p>14 face that I'm asking an unclear question.</p> <p>15 A. I'm trying. Yeah. Okay.</p> <p>16 Q. And opposing counsel was rightly objecting to the</p> <p>17 confusing question I'm asking. So let me try that</p> <p>18 again.</p> <p>19 So in your experience, are police more</p> <p>20 likely to believe some victims than others?</p> <p>21 A. Correct. Yes.</p> <p>22 Q. Okay. And does the -- and the type of sex crime</p> <p>23 might affect the likelihood that a person is</p> <p>24 believed?</p> <p>25 MR. DAMICH: Objection to form and</p> <p style="text-align: center;">Page 108</p>

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<p>1 foundation.</p> <p>2 THE WITNESS: Correct. I would say</p> <p>3 especially as it relates to potential evidence of</p> <p>4 that.</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. So that was the first precondition, which is</p> <p>7 making sure that -- you can't collect a SAK if a</p> <p>8 person doesn't report. Correct. So, all right.</p> <p>9 Okay. So let's move on to the second</p> <p>10 precondition.</p> <p>11 The SAK actually has to be collected,</p> <p>12 correct?</p> <p>13 A. Um-hum.</p> <p>14 Q. Okay. So even when a person reports a sex crime,</p> <p>15 facts aren't always collected, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. There's going to be some types of crimes</p> <p>18 where it's not possible to collect a SAK because</p> <p>19 there won't be any -- it's a crime that doesn't</p> <p>20 involve DNA or physical evidence, correct?</p> <p>21 A. Incorrect. I would rephrase that to say SAKs are</p> <p>22 most probative within a 96-hour window after the</p> <p>23 sexual assault.</p> <p>24 Q. So let me -- I think my question would have been</p> <p>25 unclear.</p> <p style="text-align: center;">Page 109</p>	<p>1 So let's say you have an online</p> <p>2 solicitation offense. There's not going to be the</p> <p>3 ability to collect a SAK because there's no --</p> <p>4 A. I see.</p> <p>5 Q. -- DNA evidence associated with online</p> <p>6 solicitation, correct?</p> <p>7 A. Correct. Yes.</p> <p>8 Q. Right. And --</p> <p>9 A. Because I was thinking, like, no, you can still</p> <p>10 collect even though perhaps ejaculation wasn't</p> <p>11 part of the rape. But, yes. Okay. Yes.</p> <p>12 Q. All right. So, like, indecent exposure, peeping</p> <p>13 Tom, something like that, correct?</p> <p>14 A. Right.</p> <p>15 Q. And then there's going to be some -- so there you</p> <p>16 just can't collect a SAK because there's nothing</p> <p>17 to collect, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And then there's going to be some types of crime</p> <p>20 where it's not that likely even though there was</p> <p>21 physical contact for there to be DNA, correct? So</p> <p>22 if we talked about sexual misconduct, say</p> <p>23 touching -- over the clothes touching, somebody</p> <p>24 touches a breast. Could you collect a SAK there?</p> <p>25 A. You could on the -- on the clothing.</p> <p style="text-align: center;">Page 110</p>
<p>1 Q. You could --</p> <p>2 A. You could collect -- you could collect the</p> <p>3 clothing and test the clothing as part of that</p> <p>4 with touch DNA.</p> <p>5 Q. Right. Is that less likely to be collected?</p> <p>6 MR. DAMICH: Objection to form and</p> <p>7 foundation.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. In your experience.</p> <p>10 A. Let me just make sure I'm understanding. Is it</p> <p>11 less likely that facts would be collected in cases</p> <p>12 where there's over the clothes touching and things</p> <p>13 like that?</p> <p>14 Q. Yes.</p> <p>15 A. Correct. Yeah, it's not -- it's not that common.</p> <p>16 Q. Okay. Are there other types of offenses where you</p> <p>17 can't collect a SAK or can't do a SAK?</p> <p>18 A. Like I mentioned, typically, if there's a delay --</p> <p>19 a delayed reporting, they won't -- you know, they</p> <p>20 can do a SAK but -- well, two things. For kids,</p> <p>21 they almost always -- even if there is a delayed</p> <p>22 report, they will almost always -- you know, if</p> <p>23 there's a disclosure, they will -- they will, you</p> <p>24 know, often collect still information there</p> <p>25 knowing that there's a delayed report. But PS</p> <p style="text-align: center;">Page 111</p>	<p>1 kid -- kids exams are different than adult exams</p> <p>2 in terms of how much they swab and what they --</p> <p>3 where they collect evidence from.</p> <p>4 Basically, there's no internal</p> <p>5 collection, or a limited internal collection, for</p> <p>6 children under the age of 12 -- or 12 and under.</p> <p>7 And then there's a very specific one on for, like,</p> <p>8 tiny ones. And then -- but, you know, if it's --</p> <p>9 they still will do one over 96 hours, but it's</p> <p>10 primarily around medical attention and help</p> <p>11 knowing that they'll still collect it, just the</p> <p>12 DNA evidence might not be as strong.</p> <p>13 I'm trying to think if the other</p> <p>14 offenses -- like, really to have a kit, your body</p> <p>15 has -- the victim's body needs to be basically the</p> <p>16 crime scene in some way. Whereas, if you were</p> <p>17 having solicitation over the internet or something</p> <p>18 like that, that person's body is not the crime</p> <p>19 scene.</p> <p>20 Q. So, and then you mentioned that delay matters.</p> <p>21 What's the -- I read in some of your work</p> <p>22 something about 72 hours and now you mentioned 96</p> <p>23 hours. How long -- what's sort of the timeframe</p> <p>24 in which SAKs are collected?</p> <p>25 A. So 72 has traditionally been the -- the window and</p> <p style="text-align: center;">Page 112</p>

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<p>1 so most -- up until fairly recently, 72 has been 2 the recommendation, and it's typically what's on 3 the form. Like for when they do an exam, they'll 4 ask the victim, like, "Have you had sex within the 5 last 72 hours?" More recently because of DNA 6 advances, now the federal guidelines have changed, 7 and it's now up to 96. 8 Q. Okay. So, but at the time that the SAKs that 9 you're looking at were collected, it would have 10 been 72? 11 A. Primarily, 72. Although, again, you can get them 12 over the 72 but most of them would have been 13 within that 72-hour window. 14 Q. So for a person who reported a crime after that 72 15 window, it's unlikely that a SAK would have been 16 collected, fair? 17 A. Correct. Correct. Yeah. 18 Q. Are there certain types of offenses that are more 19 likely to be reported within a three-day window, 20 like a violent assault? 21 MR. DAMICH: I'll object to form and 22 foundation. 23 BY MS. AUKERMAN: 24 Q. So are there certain types of offenses -- are some 25 offenses more likely to be reported within that</p> <p style="text-align: center;">Page 113</p>	<p>1 three-day window? 2 A. Certain types of sexual offenses? 3 Q. Yes. 4 A. Yes. I -- you know, sex offenses that involve 5 penetration or attempted penetration and/or 6 violence. I mean, rape itself is a violent act 7 but I mean, gratuitously, you know, like other 8 types of violent injuries. 9 Q. So sort of gratuitous violence, forceable rape, 10 something where the police were called to the 11 scene, those are more likely to be reported within 12 that 72-hour window, correct? 13 A. Correct. 14 Q. Is whether or not a victim seeks medical care a 15 factor in whether a SAK is collected? 16 MR. DAMICH: Object to form and 17 foundation. 18 THE WITNESS: So almost all of -- I mean, 19 it's usually, like, sort of part and parcel. Like 20 they -- they go together, the -- the SAK 21 collection and the medical attention. 22 BY MS. AUKERMAN: 23 Q. Okay. So you mentioned that SAKs are collected in 24 hospitals; a person's more likely to go to a 25 hospital presumably if they have injuries</p> <p style="text-align: center;">Page 114</p>
<p>1 requiring medical care? 2 A. Um-hum. 3 Q. Or if there's been penetration where they're 4 worried about STDs or pregnancy or something like 5 that, right? 6 A. Yes, or -- but there's also variations of that of 7 if they're -- if they were drugged and/or 8 intoxicated and they weren't for sure whether 9 they -- whether there was sexual contact because 10 they don't know or don't remember. Again, kids 11 ones are different. Often because kids can't 12 quite explain the nature of the -- the sexual 13 contact or, you know, don't have the words for it. 14 We also have publications on other things 15 on, like, still intimate partner ones and/or date 16 rape ones. There's -- one merging theme is when 17 there was sort of, like, either didn't -- the 18 victim didn't know violent or there was a firm, "I 19 don't give consent." Like a -- you know, like in 20 their mind -- the victim's mind, it was, like, 21 this is rape because -- or this -- you know, "I 22 need to report this because, you know, I said no," 23 and -- or, you know, "I did not want that or I was 24 drugged or something." 25 Q. But someone who's seeking medical care is more</p> <p style="text-align: center;">Page 115</p>	<p>1 likely to have a SAK collected than someone who 2 doesn't go to the hospital to seek medical care, 3 right? 4 A. Correct. 5 Q. Okay. Do some people seek medical care at 6 hospitals that don't do SAK collection? 7 A. Correct. 8 Q. So not all hospitals do SAK collection? 9 A. Correct. 10 Q. And do you know at the time you were working on 11 your research what the number of hospitals in the 12 Cleveland area that weren't collecting SAKs? 13 A. They will all collect and do the evid -- they 14 will -- at the time, any hospital you went to 15 would do a sexual assault -- a medical forensic 16 exam. Now most jurisdictions in Cleveland, this 17 is definitely the case. They have hospitals that 18 specialize in it, so if you go to one hospital, 19 let's say the closest hospital and they don't have 20 a SANE, a sexual assault nurse examiner on call or 21 they don't do those necessarily, they will 22 transfer you over to the closest hospital that 23 does do those. So now they tend to specialize so 24 that they can have someone on-call at those. But 25 at this time, you know, to a large extent, most of</p> <p style="text-align: center;">Page 116</p>

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<p>1 these, you could go to any hospital and they would</p> <p>2 do the exam.</p> <p>3 Q. Does the likelihood of getting a SAK depend on</p> <p>4 what hospital you go to?</p> <p>5 A. No.</p> <p>6 Q. Okay. Are people more likely to seek medical care</p> <p>7 if they have more serious injuries?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And you cite an article Connecting the</p> <p>10 Dots, it's about the Wayne County research. And</p> <p>11 that article says that about 21 to 43 percent of</p> <p>12 sexual assault victims seek post-medical care and</p> <p>13 therefore have access to SAK collection. Does</p> <p>14 that sound right to you?</p> <p>15 A. Yeah, those numbers are a little low. Our numbers</p> <p>16 are a little higher than that in Cleveland. But</p> <p>17 -- but, you know, there's -- there aren't a lot of</p> <p>18 good estimates as to the proportion of reported</p> <p>19 rapes that have a sexual assault kit associated</p> <p>20 with them. We have a study that shows what it is</p> <p>21 in Cleveland over time but...</p> <p>22 Q. So the Wayne County one was 21 or 43 percent,</p> <p>23 correct?</p> <p>24 A. I think that study actually cites other people's</p> <p>25 studies on that. It's not theirs.</p> <p style="text-align: center;">Page 117</p>	<p>1 Q. I believe you're right. Okay.</p> <p>2 A. I mean, I can -- I have it with me -- or I can</p> <p>3 look it up if you want. But I'm pretty sure they</p> <p>4 cite other people's studies that show that.</p> <p>5 Q. Yeah. Okay. Do some people seek medical care</p> <p>6 after the three-day window?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 (At 11:45 a.m., Exhibit 7 marked.)</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. All right. Let me actually show you the article</p> <p>12 about the Campbell one. So Campbell writes, [as</p> <p>13 read], "SAKs may not be collected in all types of</p> <p>14 sexual assaults, typically just those involving</p> <p>15 penetration."</p> <p>16 Would you agree with that?</p> <p>17 A. I would -- I would add a little bit more to that</p> <p>18 to say, like, attempted penetration as well.</p> <p>19 Which is rape -- you know, like, more with rape</p> <p>20 and/or -- you know, attempted rape or sexual</p> <p>21 assault in a more general sense. But, like, yeah,</p> <p>22 so SAKs are more likely to be collected in the</p> <p>23 more violent types of ones.</p> <p>24 Q. Right. And then there's a note here. Note 1</p> <p>25 says, [as read], "historically, kits have been,</p> <p style="text-align: center;">Page 118</p>
<p>1 and may continue to be in many jurisdictions,</p> <p>2 collected only for penetrative assaults in which</p> <p>3 there's a possibility of foreign bodily fluid</p> <p>4 recovery."</p> <p>5 Would you agree with that?</p> <p>6 A. Historically, I would say not -- not as much</p> <p>7 anymore.</p> <p>8 Q. But historically, that was the case?</p> <p>9 A. True.</p> <p>10 Q. And that would have been the case when you did the</p> <p>11 sample for your research?</p> <p>12 A. I would say they are penetrative or attempted --</p> <p>13 if the rape was, you know, disrupted or</p> <p>14 interrupted.</p> <p>15 Q. Okay. So penetration or attempted penetration?</p> <p>16 A. Right. Yeah.</p> <p>17 Q. Okay.</p> <p>18 Okay. So let's take a situation where,</p> <p>19 you know, we've got the type of crime that might</p> <p>20 produce DNA evidence. It's reported within -- you</p> <p>21 know, the case has been reported, the person goes</p> <p>22 to the hospital for medical care. It's like --</p> <p>23 you know, it's a type of crime that might have DNA</p> <p>24 evidence. It's reported within the time window.</p> <p>25 What factors at that point affect the likelihood</p> <p style="text-align: center;">Page 119</p>	<p>1 that a SAK will be collected?</p> <p>2 MR. DAMICH: Object to form. Foundation.</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. So let me be a little clearer. Is cost a factor</p> <p>5 in whether a SAK is collected?</p> <p>6 A. The cost to the victim?</p> <p>7 Q. The cost of conducting a SAK, is that a factor?</p> <p>8 A. No.</p> <p>9 Q. Was it historically a factor?</p> <p>10 A. No.</p> <p>11 Q. What is collecting a SAK -- well, what does the</p> <p>12 exam cost, do you know?</p> <p>13 A. No, the State pays -- the State pays hospitals for</p> <p>14 the exams.</p> <p>15 Q. And was that true historically?</p> <p>16 A. Um-hum.</p> <p>17 Q. Okay. And what does it cost to test a SAK?</p> <p>18 A. That has varied dramatically. It -- it would run</p> <p>19 up to 5- to \$10,000 in the early days of DNA. Now</p> <p>20 we have a cost benefit study that, at least in</p> <p>21 Ohio, I can tell you exactly what it costs based</p> <p>22 upon information from BCI, the Bureau of Criminal</p> <p>23 Investigations. It costs less than 500 to test</p> <p>24 and about 1,500 -- I can look at the exact number,</p> <p>25 but about 1,500 to -- or 1,000 to 1,500 for a lab</p> <p style="text-align: center;">Page 120</p>

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<p>1 person to, like, read the results, right?</p> <p>2 Somebody has to read the DNA results and write a</p> <p>3 lab report. So typically, between 1,000 and</p> <p>4 \$2,000 for the whole thing.</p> <p>5 Q. And that's today?</p> <p>6 A. Today.</p> <p>7 Q. Okay. And so if I'm understanding you -- well,</p> <p>8 did the cost of testing, was that part of the</p> <p>9 reason that so many SAKs were never tested?</p> <p>10 A. It's one of --</p> <p>11 MR. DAMICH: Objection. Form and</p> <p>12 foundation.</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. You can answer.</p> <p>15 A. It's one of many factors. One of many factors,</p> <p>16 yes.</p> <p>17 Q. Okay. In your experience, are all victims offered</p> <p>18 a SAK?</p> <p>19 A. If they report to the hospital?</p> <p>20 Q. Yeah, once they -- once they --</p> <p>21 A. They get to the hospital?</p> <p>22 Q. Yeah.</p> <p>23 A. And they say, you know, "I've been sexually</p> <p>24 assaulted," or, you know, some aspect of that?</p> <p>25 Like they're disclosing -- they go there, they</p> <p style="text-align: center;">Page 121</p>	<p>1 disclose that aspect and then they're offered, is</p> <p>2 that the sort of -- yes.</p> <p>3 Q. Yes.</p> <p>4 A. Typically, they are offered the option to have a</p> <p>5 medical -- a sexual assault medical forensic exam.</p> <p>6 Q. Was that true historically?</p> <p>7 A. It has been since really the late '80s, early</p> <p>8 '90s.</p> <p>9 Q. So the rape advocate that we spoke to told us that</p> <p>10 hospitals and law enforcement were much more</p> <p>11 likely to offer SAKs to certain types of victims</p> <p>12 rather than others. Does that sound accurate to</p> <p>13 you?</p> <p>14 MR. DAMICH: Objection. Form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: I -- I don't have</p> <p>17 anything -- I don't know of anything that would</p> <p>18 suggest which ones were offered the option.</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. What the rape advocate also told us is that law</p> <p>21 enforcement -- hospitals or law enforcement were</p> <p>22 likely to encourage or push a victim to do a SAK</p> <p>23 in some cases than in others where law enforcement</p> <p>24 thought, "Hey, this really is a terrible crime.</p> <p>25 We need to get -- have a SAK on this one."</p> <p style="text-align: center;">Page 122</p>
<p>1 Versus, "I don't know, but I really believe this</p> <p>2 person."</p> <p>3 So my question is, is it possible that</p> <p>4 SAKs are more likely to be collected where law</p> <p>5 enforcement is more interested in pursuing the</p> <p>6 suspect?</p> <p>7 MR. DAMICH: Objection to form and</p> <p>8 foundation.</p> <p>9 THE WITNESS: To the best of my</p> <p>10 knowledge, that's not the case and -- because most</p> <p>11 of the time -- the -- that the presenting</p> <p>12 happens first to the hospital or other sorts of</p> <p>13 things, and then they call law enforcement to come</p> <p>14 in and take a report. Sometimes they do call law</p> <p>15 enforcement and then, you know -- you know, ask</p> <p>16 the victim if they want to go to the hospital as</p> <p>17 well. But I don't know of things -- and maybe you</p> <p>18 could have more specificity there about, like, in</p> <p>19 what context the victim was -- or the victim</p> <p>20 advocate was saying. But that's not been my</p> <p>21 experience.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. Yeah. The victim advocate was saying to us that,</p> <p>24 for example, if there was a violent rape, that</p> <p>25 person would be strongly encouraged to do a SAK.</p> <p style="text-align: center;">Page 123</p>	<p>1 Whereas if the -- you know, if it was a report</p> <p>2 where somebody, you know, might -- where police</p> <p>3 didn't really believe what happened happened or</p> <p>4 thought the victim was somehow blameworthy. It</p> <p>5 was much less likely that a SAK would be</p> <p>6 collected?</p> <p>7 A. I don't think -- my opinion would be that that's</p> <p>8 not necessarily the case or at least that's not</p> <p>9 the scenario under which that occurs; that police,</p> <p>10 you know, tend to just wait till what comes with</p> <p>11 them and don't necessarily, like, make decisions</p> <p>12 early on of saying, "Oh, you've been, you know,</p> <p>13 badly beaten or -- or raped." They see victims</p> <p>14 who are badly beaten and raped all the time and</p> <p>15 don't necessarily take up, you know, the cause for</p> <p>16 this victim versus this other one necessarily.</p> <p>17 They let the bureaucracy do more of the attrition.</p> <p>18 Q. Do you know what role police played in SAK</p> <p>19 collection at the time for these kits that are the</p> <p>20 subject of your study?</p> <p>21 MR. DAMICH: Objection to form and</p> <p>22 foundation.</p> <p>23 THE WITNESS: Can you maybe give a little</p> <p>24 bit more...</p> <p>25 BY MS. AUKERMAN:</p> <p style="text-align: center;">Page 124</p>

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<p>1 Q. So did police play a role in SAK collection at the</p> <p>2 time that, you know, in the 1990s when the SAKs in</p> <p>3 your study were collected?</p> <p>4 MR. DAMICH: Same objection.</p> <p>5 THE WITNESS: About whether they would be</p> <p>6 collected or not?</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. Well, what role did police play?</p> <p>9 A. I mean, a lot -- a lot of the reports say, you</p> <p>10 know, like, either we transport -- the victim was</p> <p>11 transported to the -- they reported and they were</p> <p>12 transported. Or they were already at the hospital</p> <p>13 and the nurse and the hospital called the police</p> <p>14 to make a report and the patrol shows up to take</p> <p>15 the incident report. So in that early stages,</p> <p>16 there's often, like, kind of a disjointed role of</p> <p>17 police in that -- like I don't think that they're</p> <p>18 a huge role in that early part, or at least not in</p> <p>19 Cleveland, were not sort of a big part of the</p> <p>20 early role in, like, whether a victim got a kit or</p> <p>21 not.</p> <p>22 Q. The advocate also told us that whether or not a</p> <p>23 victim advocate was present had a major impact on</p> <p>24 whether a SAK was collected. Is that consistent</p> <p>25 with your experience?</p> <p style="text-align: center;">Page 125</p>	<p>1 MR. DAMICH: Objection to form and</p> <p>2 foundation.</p> <p>3 THE WITNESS: The -- the research on the</p> <p>4 efficacy of victim advocates in a hospital-based</p> <p>5 show that victims are -- are, you know, better</p> <p>6 supported in the hospital when there is an</p> <p>7 advocate there. And do, you know, a good job of</p> <p>8 sort of explaining some of the rights and</p> <p>9 responsibilities and help supporting the victim in</p> <p>10 that. But victim advocates are not supposed to</p> <p>11 encourage one way or the other.</p> <p>12 They're supposed to listen to what the</p> <p>13 survivor wants as part of that. I've also</p> <p>14 interviewed many survivors who cannot tell you</p> <p>15 what exactly was said and what somebody told them.</p> <p>16 And, you know, like, they're so traumatized that</p> <p>17 they don't remember any of those things.</p> <p>18 BY MS. AUKERMAN:</p> <p>19 Q. All right. Do you know if there's any research on</p> <p>20 whether the presence of victim advocates affects</p> <p>21 the likelihood of a SAK being collected?</p> <p>22 A. I don't know -- I don't know that -- that</p> <p>23 research. I do know that research is sort of</p> <p>24 overall supportive of having victim --</p> <p>25 hospital-based victim advocates. But I don't know</p> <p style="text-align: center;">Page 126</p>
<p>1 whether the variable, like, did it increase SAK</p> <p>2 collection is -- I'm -- I'm not familiar.</p> <p>3 Q. Do you know whether there's research on the</p> <p>4 demographics of victims and the likelihood of SAKs</p> <p>5 being collected? So, like, are African Americans</p> <p>6 more likely to have SAKs collected or less likely</p> <p>7 or...</p> <p>8 A. No, as far as I know, there isn't any research on</p> <p>9 that because -- it's difficult because you have to</p> <p>10 look at sort of propensities. Like who's --</p> <p>11 who's -- who are the ones all reporting and then</p> <p>12 who would be the ones that would be most likely to</p> <p>13 be victimized. I think you can make some</p> <p>14 inferences about, like, who's most likely to based</p> <p>15 upon, you know, reporting rates and victimization</p> <p>16 rates and the types of sexual assaults and the</p> <p>17 nature of the sexual assaults. But there really</p> <p>18 isn't any literature on that.</p> <p>19 Q. So once a rape kit -- or a SAK is offered, the</p> <p>20 victim has the choice whether to do it or not,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. And again, the rape advocate we spoke with said</p> <p>24 that in her experience victims were more likely to</p> <p>25 get the kit if they felt believed. Does that seem</p> <p style="text-align: center;">Page 127</p>	<p>1 right to you?</p> <p>2 MR. DAMICH: Objection to form and</p> <p>3 foundation.</p> <p>4 THE WITNESS: I would say that and in</p> <p>5 general, victims are much more likely to engage in</p> <p>6 the entire process if they feel -- you know, if</p> <p>7 they -- if the response from the system is more</p> <p>8 victim centered and victim trauma informed, which</p> <p>9 includes, you know, believing them.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. So what this advocate told us is if the police</p> <p>12 were taking the assault seriously, and they wanted</p> <p>13 to go out, you know, and catch the offender and</p> <p>14 then the victim was more likely to go ahead and</p> <p>15 get a SAK. Does that seem right?</p> <p>16 MR. DAMICH: Objection to form.</p> <p>17 THE WITNESS: I -- I can't -- that --</p> <p>18 that doesn't ring true for any of the research</p> <p>19 that I've seen or, in general, the process because</p> <p>20 I didn't --</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. But if a victim -- I mean, you said that if a</p> <p>23 victim feels believed, they're more likely to</p> <p>24 engage in the process overall, right?</p> <p>25 A. Well, I think actually it's a -- it's -- it's a</p> <p style="text-align: center;">Page 128</p>

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<p>1 broad -- it's not necessarily believing because</p> <p>2 police often won't just say, like, "I believe</p> <p>3 you." That's what the advocates say. The --</p> <p>4 the -- if they're treated in a trauma informed</p> <p>5 victim center sort of way by the police, then</p> <p>6 they're going to be more likely to engage.</p> <p>7 They're going to have less secondary</p> <p>8 victimization, which is the term you use. So I</p> <p>9 think it's -- for police, it's a broader term,</p> <p>10 it's not just, "I believe you." For victim</p> <p>11 advocates, you know, they need -- that's what they</p> <p>12 tell the victims.</p> <p>13 Q. Is there any data on the likelihood of a SAK being</p> <p>14 collected in cases where the suspect has been</p> <p>15 convicted of a past sexual offense?</p> <p>16 A. I don't think that there would be a way to know</p> <p>17 that. Like...</p> <p>18 Q. I mean, if the person -- if it's a known assailant</p> <p>19 and the person's been convicted of a past sex</p> <p>20 offense, is there any data on that?</p> <p>21 A. Yeah, the known assailant comes later in the --</p> <p>22 when it's forwarded for investigative follow-up,</p> <p>23 not at the time of the incident.</p> <p>24 Q. Okay. But the person coming in might say, "Hey, I</p> <p>25 was raped by John James." And, you know, he was</p> <p style="text-align: center;">Page 129</p>	<p>1 convicted of a rape in the past. Does that affect</p> <p>2 SAK collection at all? Is there any data on that?</p> <p>3 A. No, it doesn't because -- or it couldn't really</p> <p>4 because an incident -- a reporting officer would</p> <p>5 be taking that. They're not looking up that</p> <p>6 person. They don't -- they just put down the</p> <p>7 names and then forward it for investigative</p> <p>8 follow-up. And that's really a detective's job,</p> <p>9 to look up who the suspect is and where they are.</p> <p>10 Now, if it's somebody on the scene, like</p> <p>11 if they caught the person on -- in the act or on</p> <p>12 the -- on scene or arrested them on scene, like --</p> <p>13 like I still don't think that would change</p> <p>14 anything. Because the victim would still be going</p> <p>15 to get a SAK and then they would separate and</p> <p>16 arrest and book the suspect and then do that. So</p> <p>17 it's -- it's at a different stage in the process.</p> <p>18 Q. Okay. Is there any data on what percentage of</p> <p>19 victims decline SAKs -- a report that decline</p> <p>20 SAKs?</p> <p>21 A. I don't have any of that data. I don't know the</p> <p>22 number off the top of my head, but I know</p> <p>23 there's -- there's some colleagues that have --</p> <p>24 that might be doing some of that. But I don't</p> <p>25 know those numbers off the top of my head.</p> <p style="text-align: center;">Page 130</p>
<p>1 Q. But some victims decline, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And some victims may go to the hospital because</p> <p>4 they want medical care but they don't necessarily</p> <p>5 want to have a SAK done?</p> <p>6 A. Correct.</p> <p>7 Q. Or they may not want to bring charges?</p> <p>8 A. Correct.</p> <p>9 Q. Okay.</p> <p>10 A. They need to get screenings for STDs, for</p> <p>11 pregnancies, for other sorts of things that they</p> <p>12 don't want the SAK. Yeah.</p> <p>13 Q. So there's a variety of factors that affect</p> <p>14 whether SAKs are going to be collected once a</p> <p>15 person appears at the hospital; fair to say?</p> <p>16 MR. DAMICH: Object to form and</p> <p>17 foundation.</p> <p>18 THE WITNESS: No, I think that most of</p> <p>19 the time by the time someone appears at the</p> <p>20 hospital, they're almost -- they can decline and</p> <p>21 they can do those sorts of things but -- but</p> <p>22 they're very, very frequently going to be getting</p> <p>23 a SAK because that's why they went there.</p> <p>24 Q. But you don't have data on the percentage of</p> <p>25 people who are getting SAKs?</p> <p style="text-align: center;">Page 131</p>	<p>1 A. No. But, like, the -- all the -- all the data</p> <p>2 would suggest, and even I've interviewed</p> <p>3 several -- many victims about how they made that</p> <p>4 decision, and they went there to get that.</p> <p>5 Q. So has SAK collection changed between 1993 and</p> <p>6 2015, which I believe is the period that your data</p> <p>7 covers?</p> <p>8 A. Has the -- the -- the standards -- you mean, like,</p> <p>9 the process?</p> <p>10 Q. The practice. The practice of collection.</p> <p>11 A. Yes, I think the protocols and other things</p> <p>12 have -- have changed over time, have improved over</p> <p>13 time.</p> <p>14 Q. I'm going to show you, this is an article that you</p> <p>15 wrote. The case for "investigate all." You were</p> <p>16 an author on this article, correct?</p> <p>17 A. Correct.</p> <p>18 (At 12:04 p.m., Exhibit 9 marked.)</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. Okay. So I guess I didn't have this highlighted</p> <p>21 here. So you write that from 1993 through 2015,</p> <p>22 approximately half of the kits -- half of the</p> <p>23 assaults have a kit and that varied from as low as</p> <p>24 36 percent in 1993 to 67 percent in 2009, correct?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 132</p>

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<p>1 Q. So it sounds like roughly half of the reported 2 assaults couldn't be included in your data because 3 no kit was collected? 4 A. Correct. 5 Q. Okay. Were any of these SAKs collected out of 6 domestic violence cases? 7 A. Like intimate partner sexual assaults? 8 Q. Yes. 9 A. Yes. 10 Q. Okay. Do you know what percentage were intimate 11 partner sexual assaults? 12 A. Yeah, I have those numbers. They varied as we've 13 added more data to the database, but I thought I 14 wrote it in here. I'm looking at -- okay. A 14.4 15 percent -- I did -- were intimate partner. 16 Q. Intimate partner cases, okay. 17 We talked before about sort of what -- 18 about the variety of different crimes that there 19 are and that sexual assault is one type of sexual 20 crime, right? 21 Do you know what percentage of all 22 reported sex crimes were sexual assaults in, you 23 know, Cleveland, Cuyahoga County, during your 24 research? 25 MR. DAMICH: Object to form and</p> <p style="text-align: center;">Page 133</p>	<p>1 foundation. 2 THE WITNESS: I have data on that. I -- 3 I don't -- I would have to make -- like, I -- I 4 don't have the exact number right in front of me. 5 But would you like for me to provide a general 6 estimate of -- like, for example, of the five 7 felony sex crimes, like how many were rape versus 8 the other sex crimes? 9 BY MS. AUKERMAN: 10 Q. Well, if you don't have the data, I don't want you 11 to -- 12 A. Okay. 13 Q. -- speculate about it. And I'm talking about not 14 just felony sex crimes, I'm talking about -- 15 A. Oh. 16 Q. So it sounds like you don't know what percentage 17 of all sexual crimes, which would include peeping 18 Toms and consensual -- you know, the prostitution 19 or gross indecency, you know, a whole gamut of 20 cases. You don't know what percentage of reported 21 sex crimes are sexual assault cases, correct? 22 A. Correct. 23 Q. But the SAKs were collected for sexual assault 24 cases? 25 A. Yes, or -- well, it -- I mean, it could -- SAKs</p> <p style="text-align: center;">Page 134</p>
<p>1 can also be collected for, like -- like sexual 2 battery or -- like, the criminal codes of sexual 3 battery and for gross sexual imposition. 4 Q. Let's talk about -- 5 A. Most of them are rape. 6 Q. Okay. So most of the SAKs are rape? 7 A. Um-hum. 8 Q. Okay. Let's talk about the third precondition you 9 mentioned earlier in terms of getting to a point 10 where there's a SAK hit. And that was having 11 enough DNA for testing, right? 12 Under what circumstances would there be 13 enough DNA for testing? 14 A. It depends upon -- well, ejaculation. It depends 15 upon the body -- the bodies of the victims, if 16 someone is male-bodied or female-bodied. And 17 because female bodies hold DNA better than male 18 bodies, in particular, vaginal cavities hold DNA. 19 It's sort of kind of designed to do that for 20 pregnancy. So DNA is more present in rapes where 21 there -- where there was ejaculation because 22 there's more DNA left. But that has changed over 23 time in -- in the DNA being able to get collected 24 from smaller amounts, and the technology was able 25 to pull a profile from smaller amounts. And the</p> <p style="text-align: center;">Page 135</p>	<p>1 age of the kit. 2 Q. So for the offenses that are unlikely to lead to 3 ejaculation, is it fair to say that it's less 4 likely that those offenses, there would be 5 sufficient DNA to do a SAK? 6 A. Yes, but we -- there's certainly a lot of cases as 7 well where there wasn't, like, ejaculation in the 8 vaginal cavity, for example. Or in the -- you 9 know, like, in the anus or on the mouth, that they 10 were still able to -- there was ejaculation or 11 there was some penetration and no ejaculation that 12 they're able to get DNA from. 13 Q. But it's more likely that if you have a rape with 14 penetration, that you're going to be able to 15 collect DNA than if you have someone who is 16 touching someone's breast over the clothing? 17 A. Over the clothing, yes. Saliva, no. So -- or 18 blood. So body fluids, not just semen, but also 19 blood and saliva. 20 Q. If a person takes a shower, does that make it less 21 likely that there will be sufficient DNA? 22 A. It depends on where the swab is. So if you have a 23 lick of the breast and you take a shower, then, 24 yes. If there's vaginal penetration with -- you 25 know, inside the vaginal cavity and someone takes</p> <p style="text-align: center;">Page 136</p>

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<p>1 a shower, they can still get samples.</p> <p>2 Q. In the fourth precondition, you mention that it</p> <p>3 had to be retained by law enforcement. When would</p> <p>4 a SAK not be retained?</p> <p>5 A. Some law enforcement agencies destroyed their kits</p> <p>6 and/or have a -- had a retention policy that --</p> <p>7 like, they were -- they didn't illegally destroy</p> <p>8 kits, they just didn't keep them after -- you</p> <p>9 know, after a certain amount of time that they</p> <p>10 were required to keep biological evidence.</p> <p>11 Q. Okay. And in the fifth precondition, you mention</p> <p>12 that it had to be submitted for testing. So</p> <p>13 obviously, many SAKs were not tested in a timely</p> <p>14 fashion, right? What factors account for whether</p> <p>15 a SAK is tested?</p> <p>16 MR. DAMICH: Object to the form.</p> <p>17 THE WITNESS: That -- that varied a lot</p> <p>18 depending upon the jurisdiction. Jurisdictions</p> <p>19 and even detectives got to make their decisions if</p> <p>20 they were going to submit a kit for a test</p> <p>21 contemporaneously to the sexual assault. In</p> <p>22 Cleveland and I know in Wayne County as well, most</p> <p>23 of -- by and large, most of the kits didn't get</p> <p>24 tested contemporaneously. So what was left over</p> <p>25 as part of the initiative was almost all the kits</p> <p style="text-align: center;">Page 137</p>	<p>1 that were collected. Some jurisdictions kind of</p> <p>2 chipped away at their kits over time.</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. Okay. And then I think the last precondition I</p> <p>5 have is there had to be enough DNA information to</p> <p>6 be eligible for entry into the DNA database,</p> <p>7 right? So you're not going to have a hit if</p> <p>8 there's not enough DNA.</p> <p>9 So am I understanding correctly that you</p> <p>10 could have enough material to, like, do collection</p> <p>11 but the sample doesn't -- the DNA can't -- isn't</p> <p>12 strong enough or good enough to be entered into</p> <p>13 CODIS.</p> <p>14 MR. DAMICH: Objection to form.</p> <p>15 THE WITNESS: It depends on what kind of</p> <p>16 evidence was left and when it was tested. So if</p> <p>17 it's been tested in the last ten years, they're</p> <p>18 going to be able to get a lot more from it. And</p> <p>19 the -- the testing can extract better profiles</p> <p>20 that make it more likely to go into CODIS. Some</p> <p>21 of the earlier techniques were not as good at</p> <p>22 extracting profiles.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. So looking at your offending history article, you</p> <p>25 write that 41 percent of SAKs did not -- the</p> <p style="text-align: center;">Page 138</p>
<p>1 testing did not have enough DNA for a CODIS entry;</p> <p>2 is that correct?</p> <p>3 A. Can you maybe pull it up?</p> <p>4 Q. Yeah, let me share my screen.</p> <p>5 A. Okay. So, yes, I mean, that is true. I think</p> <p>6 it's -- you have to look at, like, of all the kits</p> <p>7 that were submitted, you know, how many were</p> <p>8 eligible to hit to each other?</p> <p>9 Q. I just want to make sure I'm understanding it</p> <p>10 correctly. So basically all of the SAKs that were</p> <p>11 tested, 41 percent, the DNA -- they don't meet</p> <p>12 precondition six, there was not enough DNA to be</p> <p>13 eligible for --</p> <p>14 A. Yeah, so there was -- there was DNA or it wasn't</p> <p>15 sufficient for a CODIS entry or the -- you know,</p> <p>16 didn't have DNA as part of -- in the kit.</p> <p>17 Q. So do the same factors that affect whether you can</p> <p>18 collect DNA, like, whether there's ejaculation</p> <p>19 also affect whether or not there's going to be</p> <p>20 enough DNA for a CODIS entry?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So I want to understand, we've talked about</p> <p>23 these six preconditions for a SAK hit, and I just</p> <p>24 want to make sure I'm understanding what they</p> <p>25 mean -- what the implications of those are for</p> <p style="text-align: center;">Page 139</p>	<p>1 SAK-based research.</p> <p>2 So since SAKs can only be collected when</p> <p>3 a crime is reported, is it fair to say that</p> <p>4 research on SAK does not include unreported sex</p> <p>5 offenses?</p> <p>6 MR. DAMICH: Objection. Form.</p> <p>7 THE WITNESS: In most cases. But again,</p> <p>8 victims can get a SAK and not report.</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Okay. But they would have had to have gone to the</p> <p>11 hospital?</p> <p>12 A. They'd have to go to the hospital but not report</p> <p>13 to police, yes.</p> <p>14 Q. So it would have been reported to a hospital but</p> <p>15 not to the police. But I think you said in the</p> <p>16 majority of cases -- or in almost all cases I</p> <p>17 think you said, they --</p> <p>18 A. Yes.</p> <p>19 Q. -- also report to the police, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So since SAKs require collectible and</p> <p>22 usable DNA evidence, is it fair to say that crimes</p> <p>23 which are more likely to result in DNA evidence</p> <p>24 are also more likely to be represented in the SAK</p> <p>25 data?</p> <p style="text-align: center;">Page 140</p>

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<p>1 MR. DAMICH: Objection to form and 2 foundation. 3 BY MS. AUKERMAN: 4 Q. You can answer. 5 A. Can you say that again? I'm trying to make -- put 6 the two together. 7 Q. Sure. 8 So a SAK hit requires collectible and 9 usable DNA evidence, right? 10 A. Um-hum. 11 Q. So is it fair to say that crimes that are more 12 likely to result in DNA evidence are also more 13 likely to be represented in the SAK data? 14 MR. DAMICH: Same objection. 15 THE WITNESS: Yes. 16 BY MS. AUKERMAN: 17 Q. Okay. And SAKs can't be collected for crimes that 18 don't result in DNA evidence? 19 A. Incorrect. 20 Q. Okay. We talked before about how certain types of 21 crimes, like online, solicitation, viewing of CSEM 22 materials, things like that, there's not going to 23 be SAK collection, correct? 24 A. Correct. 25 Q. So for those types of crimes where there's not --</p> <p style="text-align: center;">Page 141</p>	<p>1 where the body -- the physical body is not the 2 crime scene, there's not going to be SAK 3 collection, correct? 4 A. Correct. 5 Q. And those are not going to be represented in the 6 SAK evidence -- excuse me -- the SAK research? 7 A. Correct. 8 Q. Okay. And we talked about how SAKs can't be 9 collected outside of, you know, a 72, 96-hour 10 window, something like that, correct? 11 A. They can be. They're just often not. 12 Q. They're often not. 13 A. Except with kids. They do -- they do do it with 14 kids. 15 Q. So the SAK research is going to be -- the SAK 16 research is going to have primarily data from 17 crimes that are reported within that window, 18 correct? 19 A. Yeah, especially for adults. 20 Q. And the SAK data is more likely to have rapes, 21 attempted rapes, as compared to other types of 22 sexual crimes, correct? 23 A. Correct. 24 Q. And violent crimes are more likely to be 25 represented in the SAK data, correct?</p> <p style="text-align: center;">Page 142</p>
<p>1 A. Correct. 2 Q. And stranger crimes are more likely to result in 3 SAK data, correct? 4 A. Disproportionately, yes. 5 Q. Disproportionately. 6 The victim advocate that we spoke with 7 told us that in her experience, victims who got 8 SAKs were not representative of the overall victim 9 population that she served. Do you have any 10 reason to question that observation? 11 MR. DAMICH: Objection to form. 12 THE WITNESS: I think it depends on what 13 -- it depends on -- I mean, I don't know what she 14 serves. 15 BY MS. AUKERMAN: 16 Q. Okay. 17 A. Some -- for example, some victim advocates work in 18 DV, sexual assault, human trafficking, right? So 19 they're working with a variety of different types 20 of victimizations. So I -- I can't really... 21 Q. So we talked about how the SAK data doesn't 22 represent -- it more likely includes certain types 23 of, you know, rape, stranger offenses, cases 24 involving penetration, correct? 25 A. Correct.</p> <p style="text-align: center;">Page 143</p>	<p>1 Q. So is it fair to say that the SAK data is not 2 representative of all sexual offending? 3 A. Correct. 4 Q. Okay. So let's talk about what a CODIS match 5 means. I can pull this up if we need it. But I 6 reviewed an article of yours, Lawfully Owed DNA. 7 A. Oh, yeah. 8 Q. Are you familiar with that article since you wrote 9 it? 10 A. Yes. 11 Q. Okay. I'll just share my screen, so we add this 12 as -- I'm going to make this Exhibit 8. 13 (At 12:24 p.m., Exhibit 8 marked.) 14 BY MS. AUKERMAN: 15 Q. So in this article, you describe the difference 16 between offender hits and forensic hits, and I 17 want to see if I'm understanding the difference 18 between those correctly. So an offender hit is 19 where the DNA matches the DNA for a named 20 individual who's already in CODIS, right? 21 A. Correct. 22 Q. Okay. So an offender hit could tell you that new 23 DNA collected from a SAK is the same as DNA for a 24 person who's already in CODIS, right? 25 A. Correct.</p> <p style="text-align: center;">Page 144</p>

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<p>1 Q. So for example, if a person is assaulted and</p> <p>2 there's a SAK performed, you put the DNA in CODIS</p> <p>3 and it shows a match to identify a person with DNA</p> <p>4 in CODIS, right? That would be an offender hit?</p> <p>5 A. It would be a -- it would be a forensic hit to</p> <p>6 a -- to an offender hit -- to an offender profile.</p> <p>7 So CODIS has two -- two indices. One is from</p> <p>8 people. So here's -- "I'm going to swab you."</p> <p>9 "I'm going to put you -- I know who you are. It's</p> <p>10 attached to you, this is your DNA. I'm going to</p> <p>11 put that into CODIS." That's the offender side.</p> <p>12 The forensic side is a crime scene side.</p> <p>13 So it's evidence collected from a crime scene; it</p> <p>14 could be a robbery, a burglary, a rape. And</p> <p>15 testing those kits match -- then puts a forensic</p> <p>16 profile to potentially an offender profile.</p> <p>17 You can have -- you can have multiple</p> <p>18 forensic hits and one offender hit, or you can</p> <p>19 have multiple forensic hits and no offender</p> <p>20 profile. So you can have a --</p> <p>21 Q. Okay.</p> <p>22 A. -- hit but their hits are hitting to each other,</p> <p>23 not to someone who we know who they are.</p> <p>24 Q. Right. So the forensic hit is where the DNA from</p> <p>25 a sample in CODIS matches -- I'm not saying this</p> <p style="text-align: center;">Page 145</p>	<p>1 correctly.</p> <p>2 So with a forensic hit, that could tell</p> <p>3 you that DNA from a SAK being tested now matches</p> <p>4 DNA collected in relation to a past crime,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. You might not know who committed that past crime</p> <p>8 but you know that the same person committed the</p> <p>9 past crime and the current one, correct?</p> <p>10 A. Right.</p> <p>11 Q. Okay. And CODIS isn't restricted to DNA for</p> <p>12 sexual crimes, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So there could be a CODIS match to some other type</p> <p>15 of crime besides the sexual?</p> <p>16 A. Yes, definitely.</p> <p>17 Q. Okay. But the people that you were -- the</p> <p>18 research that you've done has been based on SAKs,</p> <p>19 and so the individuals, by definition, are linked</p> <p>20 to one reported sexual assault?</p> <p>21 A. Mostly reported and -- yeah, so they're all --</p> <p>22 they may not have had a hit to that person, a</p> <p>23 forensic hit, but they would have been a suspect</p> <p>24 or somehow be connected or linked to that kit, not</p> <p>25 necessarily by DNA.</p> <p style="text-align: center;">Page 146</p>
<p>1 Q. Okay. So where there's a CODIS hit, that doesn't</p> <p>2 necessarily mean that the person connected with</p> <p>3 that DNA has committed a crime, right?</p> <p>4 A. It's just -- it's just a lead.</p> <p>5 Q. Okay. So the CODIS hit could be for DNA of a</p> <p>6 person who was a consensual partner, right?</p> <p>7 A. Correct.</p> <p>8 Q. Or the police could investigate based on the DNA</p> <p>9 match and determine that there was no crime that</p> <p>10 was committed?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Or the case could go forward and the jury</p> <p>13 could acquit the person?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So what CODIS does is it shows you whether</p> <p>16 there's a DNA match. It doesn't tell you whether</p> <p>17 the person committed a crime, correct?</p> <p>18 A. Yeah, it -- it doesn't make -- it's not a go</p> <p>19 directly to jail type of card that you get in</p> <p>20 Monopoly.</p> <p>21 Q. So it's the legal system that determines whether</p> <p>22 or not a crime's been committed?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. Let's look at -- this is Exhibit 9, which I</p> <p>25 think we had already. This is the "investigate</p> <p style="text-align: center;">Page 147</p>	<p>1 all" article.</p> <p>2 A. The cost paper?</p> <p>3 Q. Yeah. Oh, I'm sorry, I'm not sharing. That's my</p> <p>4 fault.</p> <p>5 In this article, you say that 13 -- let's</p> <p>6 see if I can find it.</p> <p>7 Okay. You say that 13 percent of the</p> <p>8 cases led to indictment, correct?</p> <p>9 A. Okay. Hang on. Oh. Right. Correct. So, yeah,</p> <p>10 36 percent were not able to be prosecuted.</p> <p>11 Q. Right. And then of those that were able to be</p> <p>12 prosecuted, 13 percent led to indictment, correct?</p> <p>13 A. No, that's all of them. So I think I say, like, I</p> <p>14 think 51, 13, and 36 add up to 100. So --</p> <p>15 Q. So 13 percent of the total --</p> <p>16 A. Of the total, right. Wait.</p> <p>17 "Or the investigation was closed due to</p> <p>18 insufficient evidence."</p> <p>19 Can you scroll back up on, I'm sorry, to</p> <p>20 figure 1 just so that I'm...</p> <p>21 Q. I think there might be another figure down below.</p> <p>22 Hold on a second.</p> <p>23 A. Okay. Yeah.</p> <p>24 Q. You know what, I'm wrong. I think it is --</p> <p>25 A. I think -- yeah.</p> <p style="text-align: center;">Page 148</p>

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<p>1 Q. You know better than I do.</p> <p>2 A. There is another paper that has this figure too,</p> <p>3 but it has different stats. So -- so yeah, so</p> <p>4 it's looking at how many led to an indictment,</p> <p>5 right?</p> <p>6 Q. Right. So you say that 13 percent led to</p> <p>7 indictment and then --</p> <p>8 A. Yeah, 54 --</p> <p>9 Q. -- 51 percent were closed to insufficient</p> <p>10 evidence. And then the remainder were not</p> <p>11 prosecutable for various reasons?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 Okay. Let's go back to the Lawfully Owed</p> <p>15 DNA article. And you describe an initiative there</p> <p>16 to collect DNA from people who have been</p> <p>17 previously arrested or convicted of a felony in</p> <p>18 Ohio but had not provided DNA, correct?</p> <p>19 A. Correct. This is not -- this is an offshoot, but</p> <p>20 this is not SAK data.</p> <p>21 Q. Okay.</p> <p>22 Okay. So it looks like -- I'm on page</p> <p>23 2328 here. It looks like DNA was collected from</p> <p>24 3,609 people who owed it because of a past felony</p> <p>25 arrest or conviction, correct?</p> <p style="text-align: center;">Page 149</p>	<p>1 A. Correct.</p> <p>2 Q. And of those, they were then put into CODIS and</p> <p>3 there were 116 forensic hits, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So that means that out of the 3,069 DNA samples,</p> <p>6 there are 116 cases where the DNA matched an</p> <p>7 unsolved crime that was in CODIS?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. So that's a hit rate of about 3.8 percent?</p> <p>10 A. Correct. Because it's only hitting to the -- the</p> <p>11 forensic side, right? Because they weren't on the</p> <p>12 offender side. So --</p> <p>13 Q. They get added to the offender side now?</p> <p>14 A. They got added. But, yeah, so it's only a hit to</p> <p>15 the forensic side and the forensic side is a much</p> <p>16 smaller side of CODIS.</p> <p>17 Q. Right. So, but only 96 percent of the people with</p> <p>18 a past felony or conviction -- I'm sorry. About</p> <p>19 96 percent of the people who had a past felony</p> <p>20 conviction or arrest didn't have a hit on</p> <p>21 the forensic side.</p> <p>22 A. Correct.</p> <p>23 Q. Correct? Okay.</p> <p>24 And then let's look at table 3. So it</p> <p>25 looks like where there was -- of the cases where</p> <p style="text-align: center;">Page 150</p>
<p>1 there was a hit, in 11 percent of those cases, the</p> <p>2 person was ruled out as a suspect, correct?</p> <p>3 A. Yes.</p> <p>4 Q. So there was a DNA match, but the person was</p> <p>5 determined -- who gave the DNA, was determined not</p> <p>6 to be responsible for the crime on which they hit?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then there's another 38 percent of</p> <p>9 cases where the investigation was closed without</p> <p>10 indictment, correct?</p> <p>11 A. Correct.</p> <p>12 Q. So even though you have a DNA match and at least</p> <p>13 some kind of investigation, prosecutors conclude</p> <p>14 that there's not enough evidence to proceed,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. So basically in 49 percent of cases, basically</p> <p>18 half, even when you have a DNA match, the person</p> <p>19 for whom there was a match, either didn't commit</p> <p>20 the crime or the prosecutor concluded there was</p> <p>21 insufficient evidence to proceed, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And then there were indictments in 23</p> <p>24 percent of these cases of 27 cases, right?</p> <p>25 A. Um-hum.</p> <p style="text-align: center;">Page 151</p>	<p>1 Q. So if my math is correct, out of 3,069 people who</p> <p>2 were previously caught for some offense in the</p> <p>3 criminal justice system and had to give DNA, 27</p> <p>4 were indicted for a new crime based on the DNA</p> <p>5 match?</p> <p>6 A. Correct.</p> <p>7 Q. So that's less than one percent, right?</p> <p>8 A. I didn't -- I can write down the numbers to</p> <p>9 confirm but I would trust your one percent there,</p> <p>10 yes.</p> <p>11 Q. Okay.</p> <p>12 All right. Let's talk about DNA</p> <p>13 collection. Do you know if DNA is collected from</p> <p>14 people with -- convicted of felonies in Michigan?</p> <p>15 A. I don't know. Michigan's -- well, let me take</p> <p>16 that back. You said convicted?</p> <p>17 Q. People convicted of felonies in Michigan --</p> <p>18 A. Right. Every -- every state has -- every state</p> <p>19 has, at least at conviction, DNA is collected.</p> <p>20 Q. Okay. Do you know if DNA is collected from people</p> <p>21 arrested for felonies in Michigan regardless of</p> <p>22 whether they're convicted?</p> <p>23 A. I think I've written about it in some earlier</p> <p>24 stuff, but I can't remember.</p> <p>25 Q. All right. Let me show you -- let's see here.</p> <p style="text-align: center;">Page 152</p>

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<p>1 I'm going to show you, this is Michigan's DNA --</p> <p>2 A. Okay.</p> <p>3 Q. -- Identification Profiling System Act. This is</p> <p>4 Exhibit 10.</p> <p>5 (At 12:36 p.m., Exhibit 10 marked.)</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. And do you see that under 1(a), it requires DNA</p> <p>8 collection of people arrested for committing or</p> <p>9 attempting to commit a felony offense?</p> <p>10 MR. DAMICH: I'm going to object. You're</p> <p>11 interpreting a statute, so it's asking for a legal</p> <p>12 conclusion.</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. You can answer.</p> <p>15 A. Yeah, it says someone arrested for a felony.</p> <p>16 Q. Okay. And then do you see under 1(b) that it</p> <p>17 requires DNA collection for individuals convicted</p> <p>18 for a felony and for a series of different</p> <p>19 misdemeanors, correct?</p> <p>20 MR. DAMICH: Same objection.</p> <p>21 THE WITNESS: Correct.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. Okay. And do you see that some of those</p> <p>24 misdemeanors are sexual offenses?</p> <p>25 A. I don't know the -- the criminal -- the -- I don't</p> <p style="text-align: center;">Page 153</p>	<p>1 know if those are, like, you know, according to</p> <p>2 the Michigan code in that, like, whatever</p> <p>3 section --</p> <p>4 Q. Sure.</p> <p>5 A. -- that sex offenses are, but it looks like --</p> <p>6 like, for example, you know, loitering in a house</p> <p>7 of ill fame or prostitution. It may --</p> <p>8 Q. Indecent exposure --</p> <p>9 A. Indecent exposure of peeping, yeah. Those seem</p> <p>10 like sex -- sex -- but I'm not for sure about the</p> <p>11 ill fame or prostitution. It may be under</p> <p>12 Michigan's sex offending, you know, revised code.</p> <p>13 Q. Okay. So based on the statute that we just looked</p> <p>14 at, under Michigan law, a person convicted of a</p> <p>15 felony would -- is supposed to have their DNA in</p> <p>16 CODIS, correct?</p> <p>17 MR. DAMICH: Objection. Form. Calls for</p> <p>18 a legal conclusion.</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. You may answer.</p> <p>21 A. Yeah, it looks like Michigan is similar to Ohio</p> <p>22 in -- in that.</p> <p>23 Q. Do you know if Michigan tracks the collection of</p> <p>24 DNA from people who are convicted of sex offenses?</p> <p>25 MR. DAMICH: Object to the form and</p> <p style="text-align: center;">Page 154</p>
<p>1 foundation.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. Okay. I'm going to show you -- we'll make this</p> <p>5 Exhibit 11.</p> <p>6 (At 12:38 p.m., Exhibit 11 marked.)</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. This is MCL 28727. This is a subsection of the</p> <p>9 Michigan Sex Offender Registration Act.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see under E here -- it doesn't let me</p> <p>12 highlight for some reason. But under E --</p> <p>13 actually, hold on a second, am I looking at the</p> <p>14 wrong -- no, I'm sorry, I'm looking at the wrong</p> <p>15 thing. We want 2(e). Sorry.</p> <p>16 Under Section 2(e) it requires that the</p> <p>17 State identify whether a DNA sample has been</p> <p>18 collected and any resulting DNA profile has been</p> <p>19 entered into the federal combined DNA index system</p> <p>20 (CODIS).</p> <p>21 MR. DAMICH: I'm going to object to the</p> <p>22 form of the question. Also foundation. You're</p> <p>23 asking her to testify about a statute.</p> <p>24 THE WITNESS: This is the -- this is --</p> <p>25 you said this is the Michigan Sex Offender</p> <p style="text-align: center;">Page 155</p>	<p>1 Registry Rules and Regulations -- a legal code for</p> <p>2 that? And then it says --</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. The Sex Offender Registration Act.</p> <p>5 A. As a contingency? Like -- you know, like,</p> <p>6 contingent upon being on the registration, then</p> <p>7 it --</p> <p>8 Q. It says the registration must contain all of</p> <p>9 the --</p> <p>10 A. Okay.</p> <p>11 Q. -- following, correct? And then number 2. And</p> <p>12 then under E, it says, [as read], "An identifier</p> <p>13 that indicates whether a DNA sample has been</p> <p>14 collected and any resulting DNA profile that has</p> <p>15 been entered into the federal combined DNA index</p> <p>16 system (CODIS)."</p> <p>17</p> <p>18 A. Yeah. I -- I think -- I do know Michigan has had</p> <p>19 issues with ensuring that DNA is collected, just</p> <p>20 like Ohio has but -- and Michigan had some big</p> <p>21 profile misses like Ohio had. But I can see that</p> <p>22 it says that the DNA is supposed to go in there.</p> <p>23 Q. Okay. So when you say Michigan has had issues</p> <p>24 with collection of DNA, what's your basis for</p> <p>25 saying that?</p> <p style="text-align: center;">Page 156</p>

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<p>1 A. There's a big -- there was a big -- one of the big 2 reports came out in Michigan from -- from -- it 3 was from -- I think it was from Michigan 4 Department -- Department of Rehabilitation and 5 Corrections. I'm not sure if that's what you guys 6 call it there. Oh, here, it's the Ohio Department 7 of Rehabilitation and Corrections. Basically, the 8 prison systems in Michigan found a whole bunch of 9 people who were in prison who were supposed to 10 have their DNA in CODIS but did not. 11 Q. Okay. So let's talk about that a little bit more. 12 This is Exhibit 8, the Lawfully Owed DNA article. 13 And here you report that there is large scale 14 issues with collecting lawfully owed DNA have been 15 identified within states, including Michigan, 16 correct? 17 A. Correct. 18 Q. And you wrote this article in 2022, correct? 19 A. Correct. 20 Q. Okay. So let's look at the cite for that. That 21 footnote is to this article -- news article from 22 MLive, correct? 23 A. Yeah. 24 Q. And that article was from 2011, correct? 25 A. Yes.</p> <p style="text-align: center;">Page 157</p>	<p>1 Q. Okay. So let's go look at that article. Let me 2 share my screen. This is Exhibit 12. 3 (At 12:43 p.m., Exhibit 12 marked.) 4 BY MS. AUKERMAN: 5 Q. This is the article that you cite. 6 A. Um-hum. 7 Q. Okay. And it's dated October 4th, 2011, correct? 8 A. Yes. 9 Q. Okay. So you were citing this article on 2022 for 10 the proposition that there are large scale issues 11 with DNA collection. The article you cite is 11 12 years earlier, correct? 13 A. Right. 14 Q. Okay. And then in this article, it says that -- 15 it describes some issues and then it says that 16 there were -- it says there's a new law requiring 17 DNA collection from prisoners to be completed by 18 January 1, 2012, correct? 19 A. Yes, but this is specific to prisoners, right? 20 Q. Right. And it reports that the MDOC is collecting 21 DNA from prisoners early in their sentences now, 22 correct? 23 A. That's what the article says, yes. 24 Q. Do you have any current information about what 25 Michigan is doing to collect DNA from people?</p> <p style="text-align: center;">Page 158</p>
<p>1 A. No, just -- just what was cited, that -- that, you 2 know, there had been some high profile cases about 3 missing large numbers of people. And then in the 4 article, I cite that Michigan's was done in 5 prison, right? Ohio had also a big issue -- 6 Q. So the article you're citing though is from 11 7 years before -- 8 A. Right, but there -- we had -- right. Because at 9 the beginning, the first sentence in there says, 10 like, this has been a known issue for a while. 11 Like for -- 12 Q. Okay. But you don't know -- but you don't know 13 since 2011 when this article was written 14 whether -- what the status is of DNA collection? 15 A. Right, I -- I don't -- I don't have any 16 publications or any data from Lawfully Owed DNA in 17 Michigan. 18 Q. Okay. 19 A. Do you know whether SAKI has a lawfully owed DNA 20 in Michigan, a project? 21 Q. I -- I am the one asking questions -- 22 A. Okay. 23 Q. -- unfortunately. We can talk about that -- so 24 I'm sorry. 25 A. It's all right. The teacher came out of me.</p> <p style="text-align: center;">Page 159</p>	<p>1 Q. It's an unfair thing to say but that's how it goes 2 with a deposition. So I just want to -- 3 A. I was only saying because if they did, you could 4 look up because they would have similar things to 5 what we were doing if Michigan had the lawfully 6 owed DNA site. 7 Q. So the statute that I showed you from the sex 8 offender registry showed that it's required for 9 people who are on their registry to give DNA. Or 10 excuse me, let me correct that. 11 The statute I showed you shows that 12 Michigan State Police is required to track whether 13 or not registrants have provided DNA, okay? 14 Correct? 15 A. Um-hum. 16 MR. DAMICH: Object to the form. 17 BY MS. AUKERMAN: 18 Q. Did you request any data from the Michigan State 19 Police about what percentage of registrants had 20 provided DNA to be entered into CODIS? 21 A. No. 22 Q. So you don't know if it is 100 percent of 23 registrants who provided DNA? 24 A. I have no -- no information. 25 Q. So let's imagine a situation where a person</p> <p style="text-align: center;">Page 160</p>

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<p>1 committed a sex offense, they're now on the sex 2 offender registry and they had their DNA collected 3 as required by Michigan law. And if there's now 4 DNA collected from a new sex offense, wouldn't 5 that result in an offender hit once that SAK is 6 tested if the registrant was the one who committed 7 the crime? 8 MR. DAMICH: Objection. Form. 9 THE WITNESS: So let me rephrase to make 10 sure that I understand your question. So you're 11 saying here's someone who's on the registry, and 12 as a condition of that, let's, for argument sake, 13 say that the law is actually being implemented as 14 designed. Which most -- a lot of the lawfully 15 owed research would suggest that a lot more people 16 are being missed because the law is not 17 actually -- that people aren't actually getting 18 their DNA collected when they should be. 19 But let's say that they are following the 20 law and they are putting the DNA in there. Then 21 if they're in there, then they are -- then, you 22 know, somewhere down the line, they test a kit. 23 And that DNA in that kit hits to that person and 24 would have a forensic hit -- a forensic hit match 25 to an offender hit and have in -- in CODIS since</p> <p style="text-align: center;">Page 161</p>	<p>1 that person is in there? 2 Q. Yes. 3 A. Yes, that's what -- that's what should happen 4 contingent on the fact that, you know, there was 5 enough DNA -- 6 Q. So assuming that Michigan is following its law and 7 collecting DNA from people with felony convictions 8 and many misdemeanor sex offense convictions, 9 assuming Michigan is following its law, if there's 10 a new sex offense and DNA is collected, there 11 would be an offender hit in CODIS? 12 A. When they tested the SAK, yes. And it came -- if 13 it -- if there was DNA and it came back, yeah. 14 Q. And again, you don't know -- you don't request 15 information on the percentage of registrants who 16 have DNA in CODIS? 17 A. Uh-uh. 18 Q. So you don't know what that percentage percent is? 19 A. No, actually, I'm not for sure CODIS would 20 actually have that information. 21 Q. No, but the Michigan Sex Offender Registry 22 requires tracking. We talked about this. Of how 23 many people have submitted -- how many registrants 24 have submitted DNA, correct? 25 A. Correct. But CODIS --</p> <p style="text-align: center;">Page 162</p>
<p>1 Q. And you don't know what that percentage is? 2 A. Right, but CODIS wouldn't know -- CODIS wouldn't 3 know because it's the federal -- why they were in 4 there. Michigan might know -- Michigan might -- 5 or -- or the Bureau of Criminal Investigations 6 from Michigan might know why that person got in 7 there. But CODIS doesn't have that information. 8 Q. But the DNA would be in -- yeah, if DNA is 9 collected, then it would be in CODIS and there 10 would presumably be a hit if a person on the 11 registry committed a crime? 12 A. Yes, as long as there was DNA in the kit. Yeah. 13 Q. Okay. How are we doing? Do you want to take 14 another short break or do want to keep going? 15 (From 12:50 p.m. to 1:01 p.m., a break 16 was held.) 17 MS. AUKERMAN: So let's go back on the 18 record. 19 BY MS. AUKERMAN: 20 Q. I wanted to talk now a little bit about your 21 methodology in the research that you conducted. 22 And also, again, a little bit about starting I 23 guess with terminology to make sure that we're 24 talking about the same thing. 25 So in paragraph 9(b) of your report, you</p> <p style="text-align: center;">Page 163</p>	<p>1 say that your research in Cuyahoga County and 2 similar research in Wayne County on SAKs you say 3 have documented a large number of identified 4 serial sexual offenders, correct? 5 A. Um-hum. 6 Q. And then what do you mean by a serial sexual 7 offender? 8 A. In this case, it would mean those that are 9 connected to -- connected to two or more sexual 10 assaults and/or rapes. 11 Q. Can you just give me one second. All right. 12 So you said serial sexual offender is 13 someone who's committed more than one rape; is 14 that right? 15 A. Or connected to, yeah, more than one rape, or 16 sexual assault. So I think I defined -- I think I 17 defined it in here. I thought I did. Yeah, so -- 18 yeah, so someone connected to more than one. So 19 serial, meaning serial sexual assault offender. 20 Q. Okay. So when you say serial sexual offender, you 21 mean serial sexual assault offender? 22 A. Correct. Because this is only in reference to the 23 -- the kits. 24 Q. Okay. So we're not talking about other types of 25 sex offenses?</p> <p style="text-align: center;">Page 164</p>

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<p>1 A. No.</p> <p>2 Q. Okay. And then just so we're clear, a serial</p> <p>3 sexual assault offender would not have had to have</p> <p>4 been convicted of more than one sex offense,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Or even convicted of a single sex offense,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And they wouldn't necessarily be on a sex offender</p> <p>11 registry, correct?</p> <p>12 A. Not necessarily, no.</p> <p>13 Q. Okay. So we aren't talking about people who are</p> <p>14 convicted of sex offenses and then commit another</p> <p>15 sex offense whether caught or uncaught, correct?</p> <p>16 A. There -- there are those folks in that -- in this</p> <p>17 data, but that's not the parameters -- that's --</p> <p>18 that's not the parameters of that study.</p> <p>19 Q. So the sample is not limited to people convicted</p> <p>20 of sex offenses?</p> <p>21 A. No. Correct.</p> <p>22 Q. And then you use the term "identified serial</p> <p>23 sexual offender." What do you mean by</p> <p>24 "identified?"</p> <p>25 A. It means that you have to know who they are to</p> <p style="text-align: center;">Page 165</p>	<p>1 have their criminal history.</p> <p>2 Q. So these are people who are known -- you know,</p> <p>3 like you've got a name associated with them --</p> <p>4 A. Um-hum.</p> <p>5 Q. Okay. They're not people who have been proven to</p> <p>6 have committed more than one sexual offense,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. But they've been linked in some way to two sexual</p> <p>10 offenses?</p> <p>11 A. Correct.</p> <p>12 Q. Or two --</p> <p>13 A. Right. Right. So this -- the way I describe it,</p> <p>14 it's, like, suspected sexual offenders identified</p> <p>15 in that.</p> <p>16 Q. In paragraph 9(b)(ii), you talk about 801</p> <p>17 suspected sexual offenders or -- by which I assume</p> <p>18 you mean sexual assault offenders, correct?</p> <p>19 A. Yeah, sexual -- yeah.</p> <p>20 Q. Okay. And the citation you give to that, again,</p> <p>21 is the rethinking estimates of sexual recidivism</p> <p>22 paper that was not provided to us, correct?</p> <p>23 A. Correct. Well, I didn't know that till today.</p> <p>24 Yes, that's correct.</p> <p>25 Q. Okay. You say that in the first paragraph -- or</p> <p style="text-align: center;">Page 166</p>
<p>1 in sub ii you say that a third (39 percent) had</p> <p>2 two or more sexual assaults from SAKs or a link by</p> <p>3 DNA to a SAK, plus a rape arrest, or other</p> <p>4 registrable offense.</p> <p>5 And then the next paragraph you have a 30</p> <p>6 percent amount. Which is the correct percentage,</p> <p>7 30 or 39 percent?</p> <p>8 A. So, they're different measures. They're both</p> <p>9 correct. So it says of the 108, 30 percent were</p> <p>10 identified as being connected to a subsequent to</p> <p>11 the first coded SAK rape offense. Either by being</p> <p>12 arrested or convicted or linked to another</p> <p>13 untested kit.</p> <p>14 So -- so we had -- so if you look, the</p> <p>15 other definition includes those that have a -- or</p> <p>16 other registrable sexual offense. In this case, I</p> <p>17 was -- we only had time data, like dates of</p> <p>18 offenses for those that were connected to rapes</p> <p>19 that we coded and/or those that were in their</p> <p>20 criminal history for rape. Specifically for the</p> <p>21 crime of rape. So they're both correct, they're</p> <p>22 just --</p> <p>23 Q. As we noted previously, we -- you know, and I</p> <p>24 realize this is not on you, Dr. Lovell, but we</p> <p>25 requested a copy of your paper, we weren't</p> <p style="text-align: center;">Page 167</p>	<p>1 provided it. And so I'm not able to ask you</p> <p>2 questions about this because it -- I wasn't able</p> <p>3 to review your methodology.</p> <p>4 A. Okay.</p> <p>5 Q. So what I'm going to do instead -- and, so, you</p> <p>6 know, we're going to object to that portion of the</p> <p>7 report because it relies on facts that we could</p> <p>8 not review.</p> <p>9 So what I'm going to do instead is talk</p> <p>10 about your offending history article because that</p> <p>11 has some -- you know, some of the methodologies</p> <p>12 spelled out in it. Is that fair?</p> <p>13 A. Well, I -- well, I -- we certainly can. But I</p> <p>14 want to say that they're using different samples.</p> <p>15 Q. The 30 and 39 percent are using different samples,</p> <p>16 is what you're saying?</p> <p>17 A. No, no, 30, 39 percent is using the same sample.</p> <p>18 The -- the typology sample were all undetected.</p> <p>19 These 800, about half of these had a prior -- were</p> <p>20 convicted for the rape associated with the kit.</p> <p>21 Q. Okay.</p> <p>22 A. So, like -- so we expanded our sample over time</p> <p>23 because this is a long-term project. So the</p> <p>24 earlier study only looked at undetected -- the</p> <p>25 undetected rates associated with those kits. This</p> <p style="text-align: center;">Page 168</p>

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<p>1 more expanded sample includes those that were 2 previously adjudicated for the -- for the rape 3 associated with the kit. 4 Q. Okay. So since we didn't have that report, 5 despite requesting it -- or that data, I can't ask 6 you about that. I mean, we can -- I guess I'll 7 preserve for the record the opportunity to 8 re-depose you on that if -- in the future. But we 9 can't -- we can't -- I can't depose you on that 10 data today because it wasn't provided to me. 11 So let's look at the offending history 12 one that I believe is Exhibit 5. Okay. Let me 13 share my screen. 14 And again, you describe that as a sample 15 of disproportionately criminogenic offenders; is 16 that accurate? 17 A. Correct. 18 Q. And this sample, is this primarily from Cleveland, 19 Cuyahoga County? 20 A. Yes. 21 Q. Okay. 22 A. It's -- it's -- it's almost all Cleveland. 23 Q. Almost all Cleveland. 24 Cleveland has three times the national 25 crime rate, correct?</p> <p style="text-align: center;">Page 169</p>	<p>1 A. Correct. 2 Q. And three times the rate of reported sexual 3 assault, correct? 4 A. Correct. National. It -- it would differ if you 5 looked at sort of city to city or similar cities 6 to similar cities. But nationally, yes. 7 Q. Okay. So the sample is drawn from a geographic 8 area that has three times the national crime 9 rates? 10 A. Yes. 11 Q. Okay. And in this sample, we talked about the six 12 preconditions for a SAK match. And your research, 13 by definition, relates to SAK kits, correct? 14 A. Correct. 15 Q. So by definition, those six preconditions have to 16 be met, right? 17 A. Not all of them. 18 Q. Okay. Which ones would not need to be met? 19 A. The -- the -- the Cuyahoga County did not just 20 investigate cases that had a DNA hit. They 21 investigated all cases with -- that was part of 22 that 7,000. So they didn't necessarily have to 23 have a DNA hit for -- or DNA in the kit to be -- 24 to be, like, investigated or associated with the 25 rape.</p> <p style="text-align: center;">Page 170</p>
<p>1 Q. But they were all cases where a SAK had been 2 collected, correct? 3 A. Yes. Right, but it's not all those conditions. 4 It didn't have to have DNA, didn't have to be 5 sufficient for profile, didn't have to be in 6 CODIS. 7 Q. Right. So it would have been the first -- it had 8 to be reported and there had to be a SAK 9 collected. So it was those first couple of 10 conditions? 11 A. Yes. 12 Q. Okay. That's a helpful clarification. Okay. 13 So, and then in addition to meeting the 14 criteria of reporting the case and having a SAK 15 collected, you would -- there's also criteria to 16 be included in the sample, correct? 17 A. Right. 18 Q. Okay. So in the sample that you're talking about 19 here, there was 7,000 untested rape kits. Let's 20 go to page 475. There was 7,000 untested rape 21 kits. And of those, you selected out 721 cases 22 where there had been an investigation, correct? 23 A. Yeah, and the investigation was complete. 24 Q. Okay. Do you know what factors determined whether 25 a case was selected for investigation?</p> <p style="text-align: center;">Page 171</p>	<p>1 A. All the cases were selected for -- all the cases 2 were investigated. They just weren't all 3 investigated at the same time. So they were -- 4 Q. They investigated -- 5 A. Yeah, they investigated all 7,000. 6 Q. I see. So you picked the 721 where the 7 investigation was complete? 8 A. Right. So, yeah, because they didn't have 9 documentation -- like if they hadn't done the 10 investigation, that documentation wasn't there for 11 everything. So we're coming behind their 12 initiative to, like, study and sample their stuff. 13 So -- 14 Q. Okay. 15 A. So they had finished investigating the case. 16 Q. And did you include in your sample of cases where 17 that investigation was complete but the prosecutor 18 chose not to indict? 19 A. Yes. 20 Q. Okay. 21 A. It's right -- it's the next sentence. 22 Q. Okay. Yeah, you're right. 23 And you eliminated non-prosecutable 24 cases, correct? 25 A. If you -- just -- can you scroll down just a</p> <p style="text-align: center;">Page 172</p>

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<p>1 little bit more? Just to make sure because we've 2 done different things. 3 Yeah, so we -- we excluded -- we didn't 4 sample those cases -- of the 7,000, we didn't 5 exclude those that were previously -- in this 6 study that were previously disposed. Meaning -- 7 which is not the same thing as convicted, but 8 those that were outside of the statute, the 9 suspect was deceased, or they were closed because 10 of a consensual partner -- the hit was to a 11 consensual partner. 12 Q. So, let me just make sure I'm finding the right 13 place here, when you said previously disposed. 14 So, I'm sorry, you excluded the cases 15 that had previously been disposed of, correct? 16 A. Correct. For these -- 17 Q. And one reason -- one reason a case might 18 previously be disposed of is if the SAK was 19 associated with a prior -- the case had already 20 been prosecuted, correct? 21 A. Correct. 22 Q. Okay. So -- 23 A. They just didn't -- yeah, they just didn't test 24 the kit, but -- 25 Q. Right.</p> <p style="text-align: center;">Page 173</p>	<p>1 A. -- they prosecuted the person. Yeah. 2 Q. They found the person anyway and the person was 3 charged and convicted. Okay. Right. 4 And so, to make sure I understand, so the 5 victim reports an assault. They have a SAK done, 6 the SAK isn't tested, but independently, the 7 suspect is prosecuted and convicted, right? 8 A. Correct. 9 Q. And those people were excluded from your study? 10 A. Correct. 11 Q. So if the case was disposed of earlier through a 12 conviction for a sexual crime, the defendant could 13 have ended up on the sex offender registry, 14 correct? 15 A. Could, yes. 16 Q. Okay. So I just want to be clear; you excluded 17 from your sample people who had been convicted for 18 the SAK related -- let me say that again. 19 You excluded from your sample SAKs and 20 cases where people had already been convicted of a 21 sexual crime and hence, might already be on the 22 registries? 23 A. Well, they could have had a subsequent conviction 24 and been on that, but our selection criteria was 25 only for that -- that one kit that we sampled was</p> <p style="text-align: center;">Page 174</p>
<p>1 that one kit, you know, previously disposed or 2 not. They could have had other convictions or, 3 you know, been on the registry for other things. 4 But at least for that SAK, they weren't. 5 Q. So if that SAK resulted in a conviction, it was 6 excluded? 7 A. Correct. 8 Q. Okay. 9 A. So these are all undetected -- undetected for that 10 rape. 11 Q. And another reason you gave for non-prosecutable 12 cases is that the DNA hit was connected to a 13 consensual partner. So you would have excluded 14 cases where say the SAK was -- the DNA was found 15 to be the victim's husband, not the suspect, 16 correct? 17 A. Correct. 18 Q. Okay. What about -- and we talked about this a 19 little bit earlier, but what about cases where, 20 you know, there's a -- parents bring in their 21 15-year-old, find out she's having sex with her 22 boyfriend. And there's a SAK collected. The girl 23 says, "Hey, this is my boyfriend. You know, I was 24 totally into this." Would you have excluded that 25 case?</p> <p style="text-align: center;">Page 175</p>	<p>1 MR. DAMICH: Objection. Form. 2 THE WITNESS: It would have -- it 3 wouldn't have mattered -- you know, again, we made 4 decisions about which ones to include or not 5 include once they were sampled. But if -- if both 6 partners provided consent and the victim never 7 said she was raped and it wasn't -- it didn't fit 8 within the criminal statute for statutory rape 9 then we didn't include it. 10 So for example, you know, a 15-year-old 11 and -- you know, a 15-year-old or something like 12 that, both of those -- they both said it was 13 consensual. Mom or dad or somebody is mad that 14 their daughter had sex, takes them to the hospital 15 to get a kit. That would not be included in this. 16 BY MS. AUKERMAN: 17 Q. Because some of those age consent cases would have 18 been excluded? 19 A. Correct. Unless it was -- unless it -- you know, 20 it would be -- have been charged as statutory. 21 Q. Okay. And I believe you write that 72 percent of 22 your sample involved cases from 1993 to 1999, 23 correct? 24 A. Correct. Well, I don't -- can you -- just to 25 confirm --</p> <p style="text-align: center;">Page 176</p>

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<p>1 Q. Let me see if I can find that.</p> <p>2 A. We've expanded our sample over time. Yeah, that</p> <p>3 right there. Yes. So it's because those are the</p> <p>4 cases that the prosecutor's office were</p> <p>5 prioritizing because of the statute -- the</p> <p>6 statute. So over time, our sample has gotten, you</p> <p>7 know, including older cases, but most of these</p> <p>8 72.5 percent were in the mid to late '90s.</p> <p>9 Q. Okay. Is it fair to say that law enforcement</p> <p>10 attitudes towards sexual assault differ from</p> <p>11 attitudes in the 19 -- today? Let me restate</p> <p>12 that.</p> <p>13 Is it fair to say that law enforcement</p> <p>14 attitudes towards sexual assault today differ from</p> <p>15 the attitudes in the 1990s, 20 to 30 years ago?</p> <p>16 MR. DAMICH: Objection. Form and</p> <p>17 foundation.</p> <p>18 THE WITNESS: I -- I think that's a very</p> <p>19 hard answer to provide because that's what I</p> <p>20 study. And I would say that the -- there's some</p> <p>21 very big exceptions to that, that we aren't</p> <p>22 actually doing much better with sexual assault</p> <p>23 than we were in the '90s in terms of attrition and</p> <p>24 other sorts of things. Attitudes, maybe.</p> <p>25 Attrition, not really. Are we treating victims</p> <p style="text-align: center;">Page 177</p>	<p>1 any better? Not really.</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. Okay. Is it fair to say that hospital staff</p> <p>4 attitudes towards sexual assault today differ from</p> <p>5 attitudes in the 1990s, 20 to 30 years ago?</p> <p>6 MR. DAMICH: Objection. Form.</p> <p>7 Foundation.</p> <p>8 THE WITNESS: I don't -- I don't think I</p> <p>9 can speak to that because I haven't really, like,</p> <p>10 studied attitudes of hospital personnel.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Do victim attitudes towards sexual assault today</p> <p>13 differ from the attitudes in the 1990s, --</p> <p>14 MR. DAMICH: Objection. Form --</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. -- 20 to 30 years ago?</p> <p>17 MR. DAMICH: -- and foundation. I'm</p> <p>18 sorry.</p> <p>19 THE WITNESS: Can you describe maybe in</p> <p>20 what ways victims attitudes --</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. I guess what I'm asking is, do victims think about</p> <p>23 sexual assault in the same way today as they did</p> <p>24 in the 1990s?</p> <p>25 MR. DAMICH: Objection. Form and</p> <p style="text-align: center;">Page 178</p>
<p>1 foundation.</p> <p>2 THE WITNESS: I think in some ways, yes,</p> <p>3 and in some ways, no. I think that's a really</p> <p>4 hard -- that's a very general hard question to</p> <p>5 answer. Is there greater awareness around sexual</p> <p>6 assault and Me Too, you know, in the last five or</p> <p>7 six years? Yes. But -- but I don't see a massive</p> <p>8 wholesale change from the, you know, mid to late</p> <p>9 '90s to now in a lot of -- of this.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. Do you think that the fact that your data is from</p> <p>12 the 1990s could affect your results?</p> <p>13 A. I think -- well, this study was based upon some of</p> <p>14 the first couple of waves. We have data now from</p> <p>15 2,400 coded rape cases. So we've advanced in</p> <p>16 several -- in the past several years, and I've</p> <p>17 also included -- we also have expanded to include</p> <p>18 Akron's cases as well.</p> <p>19 And so I would say we do see some trends</p> <p>20 that are different in the '90s than more current</p> <p>21 rapes. But one difference is that in the mid to</p> <p>22 late '90s was also the very high crime rate that</p> <p>23 globally was experienced. So, like, if you</p> <p>24 remember late -- the mid to late '90s experienced</p> <p>25 extremely high crime rates. And so you can see</p> <p style="text-align: center;">Page 179</p>	<p>1 differences in, you know, reported rapes and</p> <p>2 things like that from the mid '90s and late '90s.</p> <p>3 So there's a lot more of those rapes in</p> <p>4 the mid to late '90s. And, you know, it doesn't</p> <p>5 necessarily affect completely in generalizable</p> <p>6 now, but is -- with our more expanded sample, most</p> <p>7 of these patterns have remained the same. The</p> <p>8 numbers have changed slightly but the patterns are</p> <p>9 all the same.</p> <p>10 Q. Is it possible that there was a greater emphasis</p> <p>11 in SAK collection in the 1990s on violent offenses</p> <p>12 than there is today?</p> <p>13 MR. DAMICH: Objection. Form and</p> <p>14 foundation.</p> <p>15 THE WITNESS: I don't think there's any</p> <p>16 data to know that.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. Okay. Is there any data to know whether major</p> <p>19 offenses are more -- even more disproportionately</p> <p>20 reflected in the 1990s data as compared to more</p> <p>21 recent data?</p> <p>22 A. There's really -- yeah, I don't -- we don't have</p> <p>23 the denominator to be able to do that.</p> <p>24 Q. Okay. Let's look a little more at the sample. So</p> <p>25 it says here that you coded a criminal history for</p> <p style="text-align: center;">Page 180</p>

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<p>1 58 percent of the SAK case files, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Of the match --</p> <p>4 A. Yeah.</p> <p>5 Q. So for a little under half of the sample you</p> <p>6 didn't have a conviction history?</p> <p>7 A. Well, the difference here is that we coded SAKs,</p> <p>8 which are not the same thing as offenders. So</p> <p>9 because so many offenders had more than one SAK,</p> <p>10 you're changing the unit of analysis there. So of</p> <p>11 all -- of -- you know, like, we coded 418 --</p> <p>12 right. Like, you see, like, of those SAK case</p> <p>13 files, that's how many we had proportionate to.</p> <p>14 But that's because there's a lot more offenders</p> <p>15 connected to more than one.</p> <p>16 Q. So you have more offenses than you have offenders.</p> <p>17 Right. Okay.</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. And you coded for eight felonies, right?</p> <p>20 A. Well, no, 11 felonies. And the eight you see are</p> <p>21 crimes.</p> <p>22 Q. I see. And the only sex crime though was rape,</p> <p>23 correct?</p> <p>24 A. Correct. Rape, the -- the 290702 in Ohio.</p> <p>25 Q. And you didn't code for any other kind of sex</p> <p style="text-align: center;">Page 181</p>	<p>1 crime?</p> <p>2 A. No, and it was for a rape of a -- it was for an</p> <p>3 arrest for a rape. It didn't have to be convicted</p> <p>4 for a rape but...</p> <p>5 Q. Okay. And again, it's based on the arrest, not</p> <p>6 the conviction?</p> <p>7 A. Correct.</p> <p>8 Q. Did you calculate what percentage of people would</p> <p>9 have been connected to SAKs if you only looked at</p> <p>10 convictions rather than arrests?</p> <p>11 A. Well, the numbers there you could do, you could</p> <p>12 work backwards. So, like, there you have rape,</p> <p>13 the -- those that had a conviction and 46 percent</p> <p>14 of the 119, right, were convicted --</p> <p>15 Q. That's the total number of arrests. So I'm trying</p> <p>16 to -- you say 37 percent ever arrested. Is that</p> <p>17 of the individuals or is that of the SAKs?</p> <p>18 A. So this would be the -- these would be the</p> <p>19 offenders. So the 418, like -- so of the 418,</p> <p>20 were they ever arrested for arson? Were they ever</p> <p>21 arrested for burglary? Were they ever arrested</p> <p>22 for domestic violence?</p> <p>23 Q. I think it's 408, I believe.</p> <p>24 A. Oh. What did I say?</p> <p>25 Q. 418.</p> <p style="text-align: center;">Page 182</p>
<p>1 A. Oh, sorry. Yeah, 408. And then --</p> <p>2 Q. Just so I'm understanding. So if there's 408</p> <p>3 individuals, 37 percent, so that'd be 151 people</p> <p>4 roughly, right?</p> <p>5 A. Let's see, I mean, if you've done the math there,</p> <p>6 yes, then I trust what you're saying with the</p> <p>7 math. But...</p> <p>8 Q. And then the conviction rate, the 46.12 percent on</p> <p>9 a conviction rate, is that based on individuals or</p> <p>10 is that based on the number of arrests? So if we</p> <p>11 have 151 people who were arrested -- I'm just --</p> <p>12 the math isn't adding up here for me.</p> <p>13 A. So it's saying of those incidents of rape, those</p> <p>14 are the total number of arrests, not necessarily</p> <p>15 the total number of people who have arrests.</p> <p>16 Q. Right. So if we take -- if we assume that 46</p> <p>17 percent of the 151 people are convicted, then</p> <p>18 we're down to 69 or 70 people with convictions,</p> <p>19 correct?</p> <p>20 A. With --</p> <p>21 Q. Rape convictions.</p> <p>22 A. Yes, somewhere -- I would say somewhere around</p> <p>23 there, yeah. If you're saying a little less than</p> <p>24 half were convicted of -- of the arrests that they</p> <p>25 were for rape -- or for the rape that they were</p> <p style="text-align: center;">Page 183</p>	<p>1 arrested for.</p> <p>2 Q. So in your sample, there were -- in your total</p> <p>3 sample, you had roughly 70 people who might have</p> <p>4 been on a sex offender registry?</p> <p>5 A. I'd have to look to see what -- what year they</p> <p>6 were and what Ohio's, like, registry was in that</p> <p>7 point. But I guess, let's say if it's for</p> <p>8 current -- let's say the laws of current registry,</p> <p>9 then yes, they would have been. But not all of</p> <p>10 these would have been registered depending upon</p> <p>11 when the crime was.</p> <p>12 Q. Would you agree that sample size is important in</p> <p>13 statistics?</p> <p>14 A. Of course.</p> <p>15 Q. And sample composition we've talked about being</p> <p>16 important statistics, correct?</p> <p>17 A. Yes. Oh, but let me rephrase that. Had they</p> <p>18 actually been convicted -- like, those were what</p> <p>19 was already in their criminal history. Had --</p> <p>20 these are all, though, people who walked,</p> <p>21 basically the front door is a sexual offense that</p> <p>22 they weren't adjudicated for. So had they been</p> <p>23 adjudicated for the crime associated that got them</p> <p>24 in this data set, then many more of them -- you</p> <p>25 know, all of them potentially would have had the</p> <p style="text-align: center;">Page 184</p>

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<p>1 opportunity to be prosecuted and convicted and be</p> <p>2 on the sex offender registry.</p> <p>3 Q. Right. But you don't know -- but they weren't as</p> <p>4 a result of those offenses?</p> <p>5 A. Correct.</p> <p>6 Q. Okay.</p> <p>7 A. And that's what we're arguing. Like so many of</p> <p>8 these because rape -- because these kits weren't</p> <p>9 tested and cases weren't adjudicated, there were</p> <p>10 all these undetected rapes out there that no one</p> <p>11 was -- it wasn't appearing in their criminal</p> <p>12 history.</p> <p>13 Q. Right. So you're studying undetected offending,</p> <p>14 not detected offending?</p> <p>15 A. Correct. In this sample.</p> <p>16 Q. Right. And you're not studying undetected</p> <p>17 offending after conviction, you're just studying</p> <p>18 undetected offending in general?</p> <p>19 A. Correct. Not in this study. We -- we have other</p> <p>20 studies, but yes.</p> <p>21 Q. So you write here that there's 30 percent of your</p> <p>22 sample who are suspected sexual offenders. Do you</p> <p>23 mean suspected serial sexual offenders? Let's</p> <p>24 see -- are these individuals associated with more</p> <p>25 than one offense?</p> <p style="text-align: center;">Page 185</p>	<p>1 A. Well, by definition, they would be because they're</p> <p>2 all in here because of a rape. So what we're</p> <p>3 saying here is that even though they were</p> <p>4 associated with a rape, because that rape wasn't</p> <p>5 as part of the criminal record because the case</p> <p>6 wasn't handled and the kit wasn't tested, then</p> <p>7 two-thirds of them -- only two-thirds -- or a</p> <p>8 third of them had a rape in their criminal</p> <p>9 history. Which means two-thirds of them never had</p> <p>10 an indicator that they were a sexual predator or a</p> <p>11 sexual offender, a sexual assault offender, but</p> <p>12 they -- had the kit been tested and --</p> <p>13 Q. So in the large majority of cases is what you're</p> <p>14 saying. In the large majority of cases, the</p> <p>15 criminal history didn't show that the person had</p> <p>16 any kind of sexual offending history?</p> <p>17 A. Correct.</p> <p>18 Q. So these sex offenses are being committed by</p> <p>19 people who are -- don't have a criminal history</p> <p>20 for sex offending?</p> <p>21 A. Yeah, two-thirds of them, --</p> <p>22 Q. Two-thirds of them.</p> <p>23 A. -- right, had never been arrested for -- well,</p> <p>24 specifically for rape. They could have --</p> <p>25 Q. Right.</p> <p style="text-align: center;">Page 186</p>
<p>1 A. -- been arrested for the -- for other sex crimes,</p> <p>2 but yes.</p> <p>3 Q. And I guess it sounds like at least even more of</p> <p>4 them would not have a conviction since the</p> <p>5 conviction rate was only --</p> <p>6 A. Correct.</p> <p>7 Q. -- something percent, right?</p> <p>8 A. Correct.</p> <p>9 Q. So the large majority of individuals here did not</p> <p>10 have a sex offense conviction?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. When you counted whether a person had more</p> <p>13 than one offense and was a serial sexual assault</p> <p>14 offender, did you -- you included arrests that did</p> <p>15 not lead to conviction, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you included SAK matches -- SAK forensic hits</p> <p>18 regardless of whether there was an arrest,</p> <p>19 prosecution, or conviction, correct?</p> <p>20 A. Currently. All -- because all of these were</p> <p>21 undetected at the time, there wasn't a</p> <p>22 prosecution. We know there wasn't a prosecution</p> <p>23 at the time. Right. Because these got two</p> <p>24 investigations at the time. And then as part of</p> <p>25 the Sexual Assault Kit Initiative -- as part of</p> <p style="text-align: center;">Page 187</p>	<p>1 the initiative, it includes those who, you know,</p> <p>2 cases were closed due to insufficient evidence, as</p> <p>3 well as those that, you know, weren't indicted.</p> <p>4 Q. Right. So I think we talked earlier that it was,</p> <p>5 like, 13 percent that got indicted?</p> <p>6 A. Yeah, but that's not necessarily -- that's of the</p> <p>7 total percent. I -- I -- I put -- I'm sure I put</p> <p>8 in here somewhere what percentage of just this</p> <p>9 sample had been indicted or were potentially</p> <p>10 indicted.</p> <p>11 Q. Right. But you included as a second offense or</p> <p>12 in -- in counting offenses, you included offenses</p> <p>13 that were not indicted, correct?</p> <p>14 Let me say that a little bit more</p> <p>15 clearly. I think that question was not a great</p> <p>16 question.</p> <p>17 So in order to determine if somebody's</p> <p>18 offended more than once, there are a couple of</p> <p>19 ways to do that, correct?</p> <p>20 A. Right.</p> <p>21 Q. One of them is to see if your person for whom</p> <p>22 there's a SAK -- a new SAK hit had a past</p> <p>23 conviction or arrest for rape, right?</p> <p>24 A. Yes.</p> <p>25 Q. And you included people with arrests for rape,</p> <p style="text-align: center;">Page 188</p>

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<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And people with convictions for rape?</p> <p>4 A. Yes.</p> <p>5 Q. Right? Okay.</p> <p>6 And then if the person -- you also</p> <p>7 included a person who would have more than one SAK</p> <p>8 hit, right? I mean, so they'd be associated with</p> <p>9 more than one sexual offense in CODIS?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And in counting those CODIS hits, did you</p> <p>12 include cases where there had been an</p> <p>13 investigation but a decision not to proceed?</p> <p>14 A. By the task force?</p> <p>15 Q. By the task force.</p> <p>16 A. Yes, those would be the -- those closed due to</p> <p>17 insufficient evidence.</p> <p>18 Q. So even though the prosecutor closed a case for</p> <p>19 insufficient evidence, you counted it as a second</p> <p>20 offense?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. In counting the number of sexual assaults</p> <p>23 linked by DNA or a past arrest, if the victim was</p> <p>24 the same in two assaults, did you count that as</p> <p>25 one arrest -- or excuse me -- as one assault or</p> <p style="text-align: center;">Page 189</p>	<p>1 two assaults?</p> <p>2 Let me give you an example, it might be</p> <p>3 clearer.</p> <p>4 So let's imagine a DV victim reports one</p> <p>5 sexual assault by an intimate partner, that case</p> <p>6 is not prosecuted. And then later, the victim</p> <p>7 reports another assault by the same partner. A</p> <p>8 SAK is collected in both and there's a CODIS hit,</p> <p>9 would that person be counted as a serial sexual</p> <p>10 assault offender?</p> <p>11 A. There's very few victims that have more than one</p> <p>12 kit. There are a couple and they are primarily</p> <p>13 very high risk individuals and/or those that are</p> <p>14 mentally ill. So to the best of my knowledge, we</p> <p>15 don't have any in our sample that would fit that</p> <p>16 criteria.</p> <p>17 We did remove those that -- where the</p> <p>18 victims are severely mentally ill. So, for</p> <p>19 example, some mentally ill individuals will -- you</p> <p>20 know, like one woman has reported, like, 50</p> <p>21 different rapes, right? She's -- she is very</p> <p>22 mentally ill, and so, you know, like, she doesn't</p> <p>23 know, like -- right? Like she -- she probably was</p> <p>24 sexually assaulted at some time, but she is very</p> <p>25 mentally ill.</p> <p style="text-align: center;">Page 190</p>
<p>1 So we excluded a couple of those extreme</p> <p>2 outliers. But there -- to the best of my</p> <p>3 knowledge, there's no victims that reported -- had</p> <p>4 two different kits at two different times from the</p> <p>5 same perpetrator.</p> <p>6 Q. So as I understand it, one of the goals of your</p> <p>7 research is to assess the rate of undetected</p> <p>8 sexual offending, right?</p> <p>9 A. Is to get an idea of that. I don't think -- my</p> <p>10 goal is not to, like, give a complete, like,</p> <p>11 accurate assessment of undetected. It's to say</p> <p>12 there's -- recidivism tells us so little about</p> <p>13 re-offending, and here's a better glimpse than</p> <p>14 what we've had before and what --</p> <p>15 Q. So -- right. So I mean, we talked before about</p> <p>16 how -- I mean, you said you can't necessarily give</p> <p>17 a complete accurate assessment because it's very</p> <p>18 difficult to measure re-offending, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Right. And so what you're trying to do is look at</p> <p>21 specifically -- and we talked about the importance</p> <p>22 of the sample, correct?</p> <p>23 A. Um-hum.</p> <p>24 Q. And what you're trying to do is get an idea of</p> <p>25 serial sexual assault offending by rape -- in</p> <p style="text-align: center;">Page 191</p>	<p>1 cases of rape and sexual assault, correct?</p> <p>2 A. Correct. So one of the main things that we</p> <p>3 publish quite a bit about is how the sexual</p> <p>4 assault kits are giving us a better understanding</p> <p>5 of the extent to which how often rape -- sexual</p> <p>6 offenders and, in particular, those connected to</p> <p>7 sexual assault kits continued to sexually offend,</p> <p>8 both in their past and in their future. These</p> <p>9 rates are much higher than recidivism rates</p> <p>10 suggest.</p> <p>11 So we're -- we're certainly not trying</p> <p>12 to -- and, you know, we put in all the limitations</p> <p>13 and I think I even put in the declarations, you</p> <p>14 know, like, these aren't generalizable to all</p> <p>15 sexual offenders or all rapes. However, it does</p> <p>16 give us something that we have never been able to</p> <p>17 really do before, which is looking at someone's</p> <p>18 near complete history over decades. And see,</p> <p>19 okay, let's look at what they've done over decades</p> <p>20 through a more objectable -- objective connection</p> <p>21 than self-report or recidivism.</p> <p>22 Q. So if I'm understanding you correctly, the DNA --</p> <p>23 the SAK research gives us a window into kind of</p> <p>24 the lifetime course of sexual offending for people</p> <p>25 who fit a particular profile, right? Who are on a</p> <p style="text-align: center;">Page 192</p>

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<p>1 particular sample. Is that fair to say? It's not</p> <p>2 generalizable, you said, to all sexual offenders,</p> <p>3 right?</p> <p>4 A. No.</p> <p>5 Q. And it provides the information about the group</p> <p>6 that you're studying, which makes sense, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And the group -- what you're studying is</p> <p>9 repeat sexual offending, not sexual offending</p> <p>10 after conviction, correct?</p> <p>11 A. That's not our research question. Although,</p> <p>12 again, we have -- we can do that since we have</p> <p>13 dates. But that's -- that's not the -- this isn't</p> <p>14 a recidivism study.</p> <p>15 Q. But you haven't -- that's not what's in your</p> <p>16 declaration, correct?</p> <p>17 A. I'm sorry?</p> <p>18 Q. Your report doesn't discuss separately sexual</p> <p>19 offending after conviction, correct?</p> <p>20 A. Correct. Right. Yes. Well, actually, yes. It</p> <p>21 doesn't -- it -- it doesn't do that because it</p> <p>22 includes all of them, right? Like of the 800 and</p> <p>23 all these sorts of -- it includes those that some</p> <p>24 were, you know, convicted and some were not prior</p> <p>25 to that. So we -- we do have that -- yeah, it's</p> <p style="text-align: center;">Page 193</p>	<p>1 not spelled out in the -- the declaration.</p> <p>2 Q. So just to make sure I'm very clear; your report</p> <p>3 isn't about people on registries who have been</p> <p>4 convicted of sexual crimes, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And your report doesn't compare detection</p> <p>7 rates for people with past convictions versus</p> <p>8 detection rates for people without past</p> <p>9 connections, correct?</p> <p>10 A. Correct.</p> <p>11 Q. In this offending history article, you say that</p> <p>12 more often than not, people -- the SAK-associate</p> <p>13 -- sorry. Those involved in the SAK-associated</p> <p>14 sexual assaults, more often than not, do not have</p> <p>15 an arrest for rape in their criminal histories,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And since the conviction rates are 46 percent in</p> <p>19 this particular study, less than half of those who</p> <p>20 did have arrests, would have convictions, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You mentioned that your data set has the dates in</p> <p>23 it, correct? The dates of conviction?</p> <p>24 A. Correct.</p> <p>25 Q. And you have the dates of the SAKs?</p> <p style="text-align: center;">Page 194</p>
<p>1 A. Correct. And the dates of arrest.</p> <p>2 Q. And the dates of arrest. Okay.</p> <p>3 So you could have looked at how many --</p> <p>4 you could have looked at how many people were</p> <p>5 offending after conviction, correct?</p> <p>6 A. We do -- I mean, I have a paper under review that</p> <p>7 does -- that is that.</p> <p>8 Q. But that's not --</p> <p>9 A. Correct. That's not --</p> <p>10 Q. -- included in your report, correct?</p> <p>11 A. Right.</p> <p>12 Q. Okay.</p> <p>13 Okay. I want to go down to the</p> <p>14 limitation section of your -- let's see, this is</p> <p>15 the offending history article again. We're on</p> <p>16 Exhibit 5. You write that, [as read], "our</p> <p>17 findings cannot be generalized to all suspected</p> <p>18 sexual offenders connected to SAKs or all sexual</p> <p>19 offenders (whether suspected or convicted sexual</p> <p>20 offenders)."</p> <p>21 Is that still correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And then let me show you, this is --</p> <p>24 MS. AUKERMAN: We'll mark this as Exhibit</p> <p>25 15.</p> <p style="text-align: center;">Page 195</p>	<p>1 (At 1:47 p.m., Exhibit 14 marked.)</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. This is another article of yours on -- maybe this</p> <p>4 is the wrong one. This is not it.</p> <p>5 Okay. This is an article you wrote on</p> <p>6 the bureaucratic burden of identifying and</p> <p>7 remaining your rapist. And this was also based on</p> <p>8 SAK kits, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And here you write on page 547, [as read], "Our</p> <p>11 findings cannot be generalized to all sexual</p> <p>12 assaults with kits or all jurisdictions.</p> <p>13 Additionally, our samples comprised of sexual</p> <p>14 assaults disproportionately committed by strangers</p> <p>15 and/or very casual acquaintances, and almost</p> <p>16 two-thirds of the sexual assaults in the sample</p> <p>17 occurred between 1993 and 1999, (72.8 percent),</p> <p>18 which reflects the prioritization of cases based</p> <p>19 on the state's then 20 year olds" -- "20-year</p> <p>20 statute of limitations. Therefore, these data</p> <p>21 cannot be generalized to current practice."</p> <p>22 And then you note that they're also</p> <p>23 derived from official police and prosecutor</p> <p>24 documentation, which may contain errors or fail to</p> <p>25 include essential details.</p> <p style="text-align: center;">Page 196</p>

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<p>1 Is that still accurate?</p> <p>2 A. Correct.</p> <p>3 Q. So you'd agree that you cannot generalize from the</p> <p>4 SAK data about -- the SAK data that you describe</p> <p>5 in your report to all people who commit sexual</p> <p>6 offenses in any jurisdiction?</p> <p>7 A. Correct.</p> <p>8 Q. All right. Let's look at the walking and waiting</p> <p>9 article again. This is Exhibit 6, I believe.</p> <p>10 MS. TILLMAN: I think you're sharing the</p> <p>11 wrong --</p> <p>12 MS. AUKERMAN: Oh, sorry, I think I am.</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. Are you seeing that now?</p> <p>15 A. No, I think you're sharing your chat.</p> <p>16 Q. Oh, sorry. I don't mean to be doing that.</p> <p>17 All right. Let's -- I don't even know</p> <p>18 what chat I just shared. That's --</p> <p>19 A. It didn't seem anything...</p> <p>20 Q. Okay. Good.</p> <p>21 MR. DAMICH: There was nothing good in</p> <p>22 there, Miriam. Yeah, nothing good.</p> <p>23 THE WITNESS: There was -- yeah.</p> <p>24 MS. AUKERMAN: I'm, like, what did I just</p> <p>25 share?</p> <p style="text-align: center;">Page 197</p>	<p>1 BY MS. AUKERMAN:</p> <p>2 Q. Okay. Let's try this again. I think I'm sharing</p> <p>3 the correct thing. So this I believe is the</p> <p>4 walking and waiting article. Let's just check</p> <p>5 here. Yeah. Okay.</p> <p>6 And so we're going to again look at the</p> <p>7 limitation section of that study. In there, you</p> <p>8 write that the -- [as read], "Our data are also</p> <p>9 disproportionately comprised of sexual assaults</p> <p>10 committed by strangers (42 percent) compared to</p> <p>11 national estimates that strangers commit</p> <p>12 approximately 15 percent of sexual assaults,"</p> <p>13 correct?</p> <p>14 A. Yeah. Although, I would say, like, the national</p> <p>15 estimates are based on -- just based on</p> <p>16 victimization, not reported. So reported rapes</p> <p>17 are higher than -- than just prevalence rates. So</p> <p>18 that 15 percent means those that are reported and</p> <p>19 not reported. The numbers are a little bit closer</p> <p>20 when you look at actual reported rapes.</p> <p>21 Q. Right. But this --</p> <p>22 A. Just to clarify, yeah --</p> <p>23 Q. People are more likely to report a stranger rape,</p> <p>24 correct?</p> <p>25 A. Correct. Correct.</p> <p style="text-align: center;">Page 198</p>
<p>1 Q. And so in terms of the total actual sexual</p> <p>2 offending that happens, strangers are</p> <p>3 disproportionately included in -- stranger rapes</p> <p>4 are disproportionately included in the SAK data?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Are you aware that a -- whether or not</p> <p>7 someone has a stranger as a victim, is -- makes</p> <p>8 that person higher risk?</p> <p>9 A. So I do know it's on many risk assessments. But</p> <p>10 in our data, we talk a lot about crossover</p> <p>11 offending. Meaning --</p> <p>12 Q. But -- but risk assessment --</p> <p>13 A. -- like --</p> <p>14 Q. Yeah.</p> <p>15 A. Right. But, like, part -- I'm explaining that</p> <p>16 part of the issues with what we are -- part of</p> <p>17 it -- not specifically around risk assessments.</p> <p>18 But that part of the issue is that we know more</p> <p>19 about stranger -- we don't know who they are but</p> <p>20 we know more about stranger rapes. Because these</p> <p>21 kits weren't tested with those that were</p> <p>22 associated with people they did know, you</p> <p>23 couldn't -- and because DNA wasn't connecting</p> <p>24 them. Once you have DNA connecting them, you can</p> <p>25 see that stranger rapes -- that people who rape</p> <p style="text-align: center;">Page 199</p>	<p>1 people they know often rape people they don't know</p> <p>2 as well. So that it's not --</p> <p>3 Q. But --</p> <p>4 A. So the research would suggest it's not as good of</p> <p>5 a predictor as this -- it has traditionally been</p> <p>6 used because there were all these undetected rapes</p> <p>7 that we didn't know about.</p> <p>8 Q. Right. So there's undetected offending that</p> <p>9 occurs both by people who have been convicted and</p> <p>10 people who haven't been convicted, right?</p> <p>11 A. Correct.</p> <p>12 Q. And so what you're saying is that we can get --</p> <p>13 this data is giving us some better information,</p> <p>14 but you're aware that whether or not someone has a</p> <p>15 victim who's a stranger is used in risk assessment</p> <p>16 tools currently to identify people as higher risk?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then you mention that the data's</p> <p>19 derived from official police and prosecutorial</p> <p>20 sources, and is based on information provided</p> <p>21 indirectly by victims, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And did you look at all at the defendants</p> <p>24 accounts of what happened?</p> <p>25 A. So few of these cases were actually -- so we did</p> <p style="text-align: center;">Page 200</p>

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<p>1 and we do have that whenever there is some mention 2 of an interview with a suspect. We have 3 information coded in our database on that. We 4 haven't published anything specifically related to 5 that. I've read a bunch of those case files and, 6 you know, suspects, you know, "It wasn't me. I've 7 had sex with thousands of women." Like the -- 8 there's only a handful usually of responses back 9 to -- to those.</p> <p>10 Q. Right. So it's fair to say that victims and 11 defendants often have different accounts of what 12 happened, right?</p> <p>13 A. Right. Right. Yes.</p> <p>14 Q. Right.</p> <p>15 A. So, yeah.</p> <p>16 Q. So it's up to the judge or jury to determine, you 17 know, whether or not the defendant's account is 18 correct or whether or not the victim's account is 19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. But I'm saying we do have that data.</p> <p>23 Q. But it's not part of the --</p> <p>24 A. Right, it's not part of the --</p> <p>25 Q. Okay. Let's go back and look at your report. So</p> <p style="text-align: center;">Page 201</p>	<p>1 in paragraph 9(e) -- let's see. You summarize and 2 say that these estimates 35.7 percent for Wayne 3 County to 39 percent for Cuyahoga County should be 4 considered the lowest reasonable estimates of 5 repeat sexual assault. Okay. Do you still agree 6 with that statement?</p> <p>7 A. Yeah. Yeah.</p> <p>8 Q. Okay. Now we talked earlier about the importance 9 when talking about re-offending and recidivism of 10 identifying the population under observation, 11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Did you limit your statement here to the 14 population under observation?</p> <p>15 A. Observation of those that sexually assault.</p> <p>16 Q. So when you give this estimate, you're referring 17 only to sexual assault offenders?</p> <p>18 A. Yeah, because...</p> <p>19 Q. Is that correct?</p> <p>20 A. Yes. Correct.</p> <p>21 Q. Okay. Sorry, I didn't hear you respond.</p> <p>22 A. Oh.</p> <p>23 Q. Okay. So this statement is, these estimates are 24 limited to sexual assault offenders?</p> <p>25 A. Yeah, to sexual assault --</p> <p style="text-align: center;">Page 202</p>
<p>1 Q. Okay. And so you're not attempting to extrapolate 2 to repeat offending for all types of sexual 3 offenses?</p> <p>4 A. No.</p> <p>5 Q. Okay. And we talked earlier about the importance 6 when talking about re-offending and recidivism, 7 about talking about how it's known and measured. 8 When you talk about repeat sexual assault here, 9 you're not talking about committing a new offense 10 whether detected or undetected after conviction, 11 correct?</p> <p>12 MR. DAMICH: Object to the form.</p> <p>13 THE WITNESS: I would include all of 14 that. So I would include those that had prior, 15 later, whatever. Just, you know, how often are 16 they committing sexual assault more than once.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. Right. So it's sexual assault more than once 19 regardless of when or whether they were convicted?</p> <p>20 A. Correct.</p> <p>21 Q. So is it fair to say that these estimates are 22 based on research involving people who commit 23 rapes or sexual assaults that are likely to be 24 reported -- likely to be reported within a 72 to 25 96-hour window, likely to lead people to go to the</p> <p style="text-align: center;">Page 203</p>	<p>1 hospital, likely to have DNA, and likely to have 2 evidence collected through a SAK?</p> <p>3 A. Correct. That's why the -- that's why we say the 4 actual number is much higher. Because if you're 5 limiting it to just those cases, the number that 6 exists, that sort of dark figure is much higher.</p> <p>7 Q. Right. But the research sample you were looking 8 at is the sample I just described to you, correct?</p> <p>9 A. Right, but I think you're going backwards in terms 10 of how it can be generalized. If you're putting 11 all these limitations on the extent to which, 12 right, like, I say in the sentence above, only 40 13 percent had -- you know, 60 percent had the 14 opportunity to hit. So once you add those in, it 15 actually -- the numbers then are higher than they 16 are lower.</p> <p>17 Q. You're talking about the fact that there is 18 offending that happens that is not going to be 19 detected by the SAK kits, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. But that's a different question than 22 whether the SAK -- the research on the SAK kits 23 measures all of that offending or whether it's 24 based on the sample that you have, correct?</p> <p>25 A. Can you rephrase that?</p> <p style="text-align: center;">Page 204</p>

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<p>1 Q. So the sample -- the research that you have done 2 on SAKs is obviously based on the sample that you 3 pull, correct? 4 A. Correct. 5 Q. Okay. And so in terms of your projections, 6 they're based on that sample, correct? 7 MR. DAMICH: Object to form. 8 THE WITNESS: So what -- no, I -- so if 9 you're saying that if we can find 40 percent of 10 someone who we know has been connected to a rape 11 or a kit, even under all these conditions. 12 Then -- then what we're saying is if we -- if we 13 can connect 40 percent to what we know here, then 14 the -- and what we know about all these other 15 things means the -- the number is much higher. 16 This is a concern -- 17 BY MS. AUKERMAN: 18 Q. You're saying potentially for the type of people 19 who are involved in your research, the numbers 20 could be higher? 21 A. For sexual assault offenders, yes. 22 Q. Okay. Have other scholars outside of your team 23 analyzed the data set that you're working with? 24 A. It's not public. 25 Q. Okay. So no other scholars have replicated your</p> <p style="text-align: center;">Page 205</p>	<p>1 results? 2 A. No. 3 Q. We talked before about the Wayne County research 4 as being the only others that have peer-reviewed 5 research around these issues. That's all -- and 6 that's also based on the SAKs, correct? 7 A. Correct. 8 Q. And that also doesn't distinguish between people 9 who committed offenses after conviction and those 10 who committed more than one offense regardless of 11 conviction? 12 A. It's not a recidivism study. 13 Q. Let me share my screen again. So this is the 14 Campbell study, and it talks about the comparison 15 to your research. And then it says -- 16 A. Is this the Connecting the Dots one? 17 Q. This is Connecting the Dots. 18 A. Okay. 19 Q. Yeah. Sorry. So this is Exhibit -- 20 A. She's published a lot of -- they publish a lot of 21 things too, so just making sure. 22 Q. Okay. Yeah. It's the one that's cited in your 23 article. And it talks about how her rates are 24 different from the rates that you found. And then 25 she writes, [as read], "There are key</p> <p style="text-align: center;">Page 206</p>
<p>1 setting-level (e.g., city) and methodological 2 (e.g., sampling) variations between these studies, 3 and future research is needed to clarify how these 4 differences affect documented rates of suspected 5 serial sexual perpetration." 6 Would you agree with that? 7 A. Yes. That -- yeah. 8 Q. Okay. I want to go back to paragraph 5(a) of your 9 report. I'm going to share my screen again. 10 You talk about the high rates of sexual 11 victimization in the United States. And you sort 12 of say there's kind of two possible bases for 13 that. 14 A. Simplistically, yes. 15 Q. Simplistically, right. One's a sizable portion of 16 the population, mostly male are sexual offenders 17 or that repeat sexual offending is common, right? 18 What do you consider a sizable portion of the 19 population? 20 A. Well, I think if you're taking it at its base 21 level, what you would say is if -- if offenders 22 are only committing once and one -- who are almost 23 all male or just, you know, 90 to 98 percent male 24 depending on how you're measuring it -- then if 25 you're saying if -- if the male population who</p> <p style="text-align: center;">Page 207</p>	<p>1 rape -- only rape one person ever in their life, 2 then a fifth of the male population are rapists. 3 Right. 4 Q. So 25 percent? Or 20 percent -- 5 A. No, 20 percent. Yeah. What did I say? 25 are 6 rapists. If that's its most basic form, which the 7 data -- most data don't really seem to suggest 8 that one in five men are rapists. Instead, the 9 preponderance of evidence really suggests that 10 repeat sexual offending is more common. 11 That there's a small proportion that 12 commit a lot of crime. That's also a basic 13 chronological principle, that a small portion of 14 individuals commit the most number of crimes, 15 disproportionate number of crimes. You could 16 also -- it's also by space and other sorts of 17 things. 18 So that's the sort of argument that you 19 can't have this be really common in society and 20 also say, you know, like, we don't think -- we 21 think, you know -- you know, they're only doing it 22 one every -- you know -- you know, one out of 23 every five men are rapists. 24 Q. So I wanted to ask about that because you 25 mentioned that you published a monograph, edited</p> <p style="text-align: center;">Page 208</p>

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<p>1 volume, and I was looking at the chapter in that.</p> <p>2 I don't have that to pull up because I have the</p> <p>3 actual book here. You get another royalty for</p> <p>4 that.</p> <p>5 A. Yeah, I'm glad you bought the book. That's good.</p> <p>6 I'll get that point one cent maybe later in life</p> <p>7 or whatever the portion is. It's not much.</p> <p>8 Q. Yeah. So on page 110, you report about a study</p> <p>9 that found that 35 percent of males reported some</p> <p>10 likelihood of committing a sexual assault if given</p> <p>11 the opportunity without being caught, correct?</p> <p>12 A. Right.</p> <p>13 Q. So that's a sizable portion of the population;</p> <p>14 wouldn't you agree?</p> <p>15 A. I disagree. Well, I agree but not what you're</p> <p>16 saying. So I agree that it's a sizable portion of</p> <p>17 the population but what that article is what's</p> <p>18 called -- what that article is motivation to</p> <p>19 offend. So not offending. So that study says</p> <p>20 that --</p> <p>21 Q. All right. Hold on just a second.</p> <p>22 (From 2:08 p.m. to 2:09 p.m., off the</p> <p>23 record.)</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. I'm sorry, can you say that again? Something</p> <p style="text-align: center;">Page 209</p>	<p>1 was -- my computer was acting strange.</p> <p>2 A. So that article -- and it's sort of a seminal</p> <p>3 study, is that there's a motivated group of</p> <p>4 offenders, not offenders who actually act. But</p> <p>5 the one in five would be people who -- one in five</p> <p>6 women means somebody acted on them. Like it was</p> <p>7 an actual commitment. And we know that people</p> <p>8 would commit a lot more crimes if they didn't get</p> <p>9 caught. So the -- the idea of, like, motivated</p> <p>10 offenders versus actually those that -- that</p> <p>11 complete the motive -- you know, who actually act</p> <p>12 on their motivation are different.</p> <p>13 Q. All right. But that article says that -- I mean,</p> <p>14 you know, you report that there's 35 percent of</p> <p>15 males would commit an offense --</p> <p>16 A. Right. They said it would be -- if they wouldn't</p> <p>17 get caught, they would be motivated to do it but</p> <p>18 not necessarily, "I have raped."</p> <p>19 Q. Okay. So do you recall giving a presentation to</p> <p>20 the Ohio Alliance to end sexual violence in</p> <p>21 October of 2022?</p> <p>22 A. 2022? Is that the one on victim blaming?</p> <p>23 Q. Yeah, it's on victim blaming.</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So let me see if I can do this without --</p> <p style="text-align: center;">Page 210</p>
<p>1 let me see if I can share my screen here. I want</p> <p>2 to play you a clip from that. And this is you</p> <p>3 speaking at that event.</p> <p>4 (From 2:11 p.m. to 2:11 p.m., off the</p> <p>5 record.)</p> <p>6 Q. It's minute 42:56 is where I'm trying to start.</p> <p>7 Okay. Let's try that again. Do you still agree</p> <p>8 with that statement that you made to the Ohio</p> <p>9 Alliance to end sexual violence?</p> <p>10 A. I -- I couldn't hear any audio that went with it.</p> <p>11 MR. DAMICH: Yeah, there was no audio.</p> <p>12 MS. AUKERMAN: You couldn't hear the</p> <p>13 audio?</p> <p>14 THE WITNESS: Uh-uh.</p> <p>15 MS. AUKERMAN: Oh. I wish someone had</p> <p>16 told me that.</p> <p>17 THE WITNESS: I -- I thought you were</p> <p>18 trying to find the -- the --</p> <p>19 MS. AUKERMAN: No. Sorry. All right. I</p> <p>20 wonder why you can't hear the audio.</p> <p>21 (From 2:14 p.m. to 2:15 p.m. off the</p> <p>22 record.)</p> <p>23 MS. AUKERMAN: Here we go.</p> <p>24 (Video playing.)</p> <p>25 VOICE OF MS. LOVELL: There's also a way</p> <p style="text-align: center;">Page 211</p>	<p>1 that people talk about rapists as being sort of</p> <p>2 monsters, the mentally ill, sickos, not normal</p> <p>3 people. Whenever we know that -- in fact, about</p> <p>4 30 percent of college-age men have perpetrated</p> <p>5 some form of sexual violence by the time they --</p> <p>6 you know, in college or prior to college. So by</p> <p>7 the time they reach college, about a third of men</p> <p>8 have perpetrated -- college men have perpetrated</p> <p>9 some form of sexual violence.</p> <p>10 So in fact, it's not just the sickos,</p> <p>11 it's not just the monsters. While they may be</p> <p>12 that, what actually ends up happening when you</p> <p>13 describe it as sort of a Netflix documentary sort</p> <p>14 of thing, is that then when confronted with</p> <p>15 knowing a perpetrator, you couldn't -- then they</p> <p>16 think, "Oh, that couldn't possibly be my son, my</p> <p>17 friend, my colleague, my friend," those sorts of</p> <p>18 things.</p> <p>19 And we saw that a lot within Me Too as</p> <p>20 terms of, "Oh, he's a good guy, he couldn't have</p> <p>21 possibly done that." But when you describe that</p> <p>22 sort of mythology of a rapist, you're doing a</p> <p>23 disservice to victims as well.</p> <p>24 (End of video.)</p> <p>25 BY MS. AUKERMAN:</p> <p style="text-align: center;">Page 212</p>

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<p>1 Q. Okay. So do you still agree with your statement</p> <p>2 in that presentation that about one-third of</p> <p>3 college men have perpetrated some form of sexual</p> <p>4 violence?</p> <p>5 A. Yes, but that also coincides and doesn't</p> <p>6 contradict the -- the one -- the -- the study that</p> <p>7 I had about the one in five women and the</p> <p>8 propensity to do those things because I</p> <p>9 specifically used the term sexual violence and not</p> <p>10 rape. The one in five is rape, the -- when you</p> <p>11 have the broadest category of sexual violence,</p> <p>12 which includes a whole variety of acts, you get</p> <p>13 about a third. But this study I cited used the</p> <p>14 term specifically "rape."</p> <p>15 Q. So one in three college -- about one in three</p> <p>16 college men have perpetrated some form of sexual</p> <p>17 violence?</p> <p>18 A. Right, in the broadest category that the -- in</p> <p>19 that study if you look at the national prevalence</p> <p>20 estimates of that. Of the broadest category of</p> <p>21 the term, sexual violence, yes. If you use rape,</p> <p>22 no.</p> <p>23 Q. Okay. And then would you still agree with your</p> <p>24 statement that focusing on the mythology of</p> <p>25 rapists does a disservice to victims?</p> <p style="text-align: center;">Page 213</p>	<p>1 A. Yes. I think when you try to make them seem like</p> <p>2 a Netflix documentary of then -- when confronted</p> <p>3 with a sexual perpetrator, they have a hard time,</p> <p>4 you know, believing that -- you know, and</p> <p>5 processing. Or if it's by somebody that they know</p> <p>6 or love, "he's not a monster, how could he do</p> <p>7 this? He's not Ted Bundy." So and so. So that</p> <p>8 presentation -- but that presentation was for</p> <p>9 reporters. So --</p> <p>10 Q. Right. I understand.</p> <p>11 A. -- it was in the context of writing how reporters</p> <p>12 write and talk about.</p> <p>13 Q. Right.</p> <p>14 A. That's why I brought in the sort of Netflix and</p> <p>15 documentary component.</p> <p>16 Q. Right. But we want to have an accurate picture of</p> <p>17 sexual offending and focusing on the sort of -- I</p> <p>18 think you talk about in that, the dark and stormy</p> <p>19 night, the scary person jumping out of the bushes,</p> <p>20 that that's not representative of sexual</p> <p>21 offending, correct? And that we need to be</p> <p>22 looking at the fact that a lot of violence happens</p> <p>23 with people that we know and those kinds of</p> <p>24 things, correct?</p> <p>25 A. Yeah.</p> <p style="text-align: center;">Page 214</p>
<p>1 Q. And so we don't want to mythologize or create</p> <p>2 these monsters when a lot of sexual offending is</p> <p>3 happening outside of that context, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So I want to look at your report again.</p> <p>6 And in 9(b)(ii) on the second bullet, you give a</p> <p>7 couple of examples of people in your sample,</p> <p>8 right?</p> <p>9 A. Yeah.</p> <p>10 Q. And you say that one of these offenders is a</p> <p>11 former probation officer. And then you describe a</p> <p>12 pretty horrific series of rapes by that person.</p> <p>13 A. Correct.</p> <p>14 Q. Would you say that probation officer is a monster?</p> <p>15 A. I wouldn't want to live next to that person.</p> <p>16 Q. Okay. But he's the kind of person that you're</p> <p>17 talking about when you say focusing on monsters?</p> <p>18 A. I-- I would say -- but he was a probation officer</p> <p>19 and went -- and many of his victims actually</p> <p>20 described him at first as being, you know, very</p> <p>21 charismatic and nice. So actually I think that</p> <p>22 actually further serves the point of, like, if we</p> <p>23 only think that they're, like, terrible monsters</p> <p>24 and we don't often think that they are hiding in</p> <p>25 plain sight and that they have normal jobs and all</p> <p style="text-align: center;">Page 215</p>	<p>1 these sorts of things. Like he wasn't suspected</p> <p>2 for a long time connected to these rapes because</p> <p>3 he didn't come across as a monster.</p> <p>4 Q. You did an article specifically about him,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 (At 2:20 p.m., Exhibit 15 marked.)</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. And let me know if you need me to share my screen</p> <p>10 on this. And that's the Understanding the</p> <p>11 Geography of Rape article, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And in that article, you write this case is</p> <p>14 certainly an outlier, correct?</p> <p>15 A. Certainly. It's the most number of kids in</p> <p>16 Cuyahoga County that that person is connected to.</p> <p>17 Q. So it's not representative of the sample?</p> <p>18 A. No.</p> <p>19 Q. Even though the sample itself is very</p> <p>20 criminogenic?</p> <p>21 A. Correct. That article says -- it's a case study.</p> <p>22 Q. Okay.</p> <p>23 Okay. Then going back to paragraph 11 of</p> <p>24 your report. You say that, [as read], "Sexual</p> <p>25 assault offenders frequently commit other types of</p> <p style="text-align: center;">Page 216</p>

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<p>1 crimes (general offending) in addition to sexual 2 assault offenses (sexual assault offending)." 3 Okay. 4 So we're talking again here about 5 specifically sexual assault offenders, correct? 6 A. Correct. 7 Q. And not anyone convicted of a sex crime, correct? 8 A. Right. 9 Q. Okay. And then in 11(c), you say that general 10 recidivism rates for those convicted of sexually 11 related crimes are lower than those convicted of 12 non-sexually related crimes." 13 Is that statement still correct? 14 A. That's correct, if you're looking at recidivism. 15 Q. Right. We're looking just at recidivism. So when 16 we're looking just at recidivism, people who 17 commit sexual offenses are less likely to commit 18 non-sexual offenses than other people with a 19 criminal history? 20 A. I would say those that have been caught and 21 convicted and -- 22 Q. Yeah. 23 A. -- they get out, yes. 24 Q. Okay. And then in paragraph 12, you talk about 25 the research that you did on undetected sexual</p> <p style="text-align: center;">Page 217</p>	<p>1 assault offenders, correct? 2 A. Correct. 3 Q. This is the Exhibit 5 offending histories article. 4 And you describe the study as, "Examining the 5 offending behaviors of a large number of 6 undetected sexual assault offenders (those not 7 previously arrested and/or convicted of the sexual 8 offenses associated with the kits)." Correct? 9 A. Correct. 10 Q. So this is research about undetected offenders, 11 not people who have been convicted of sex offenses 12 and who are on registries, correct? 13 A. Correct. 14 Q. Okay. And as we talked about before, you excluded 15 the SAKs for the -- that were associated with a 16 sexual offense where there was a prior conviction, 17 correct? 18 A. Correct. 19 Q. And so, again, this is not people -- this is not 20 research about people on registries? 21 A. Correct. 22 Q. Okay. So paragraph 12(d), you say, [as read], 23 "The findings from this study suggest that sexual 24 offenders might have general recidivism that more 25 closely matches the rates for those convicted of</p> <p style="text-align: center;">Page 218</p>
<p>1 non-sexually related crimes. They have yet to be 2 identified as sexual offenders due to 3 underreporting and attrition in the criminal 4 sexual" -- "criminal justice system." Correct? 5 A. Correct. 6 Q. And so here you're also looking at people who are, 7 quote, "yet to be identified as sexual offenders." 8 In other words, not people with convictions for 9 sex offenses, correct? 10 A. Correct. 11 Q. Okay. Again, we're not talking about registrants, 12 correct? 13 A. Correct. 14 Q. And when we are talking about sexual offenders 15 here, do you mean sexual assault offenders from 16 SAK kits? 17 A. No, I'm -- I'm talking about in reference to the 18 11(c). So if we're talking about those that have 19 been convicted of a sexually related offense and 20 here's all these sexual assaults that aren't in 21 their criminal history because the system doesn't 22 address them, then it's that -- it's -- it's so 23 rare to get a conviction for rape. That if you're 24 just looking at those that have been convicted of 25 rape and then following them along, you're not</p> <p style="text-align: center;">Page 219</p>	<p>1 capturing a whole bunch of their other offenses. 2 Because they haven't been identified as being a 3 sexual offender yet. So you can't really say that 4 sexual offenders have -- you can't say sexual 5 offenders have lower -- general recid -- lower 6 rates than others if you're just using the term 7 "recidivism" to do it. If you're just looking at 8 those that have -- 9 Q. Right. I'm asking you a different question -- 10 A. Okay. 11 Q. What I'm trying to understand is when you talk 12 about sexual offenders here, right? When you say 13 that sexual offenders might have general 14 recidivism, and you're talking about sexual 15 offenders. 16 A. Right. 17 Q. Do you mean sexual assault offenders as identified 18 by the SAK kits? 19 A. Not -- not necessarily as identified by the SAK 20 kits but those of sexual assault offenders. 21 Q. This research was based on SAK kits, correct? 22 A. Correct. 23 Q. Okay. And the SAK kits were about sexual 24 assault -- 25 A. Correct.</p> <p style="text-align: center;">Page 220</p>

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<p>1 Q. All right. And so the people in your sample are</p> <p>2 people who had a sexual assault that resulted in a</p> <p>3 SAK kit, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So when you say sexual offenders, that's the</p> <p>6 people you mean?</p> <p>7 A. I am not -- I don't -- I think that you're</p> <p>8 misinterpreting how you might interpret science</p> <p>9 that way. So there's no science that says we are</p> <p>10 going to do studies and only in this one thing,</p> <p>11 we're never going to try to do a larger assessment</p> <p>12 of what the -- the whole cadre of science would</p> <p>13 tell us. This research, coupled with all the</p> <p>14 other research, suggests because we're not</p> <p>15 detecting sexual assault offenders; that the fact</p> <p>16 that they have lower general recidivism rates just</p> <p>17 means they haven't been detected for the sexual</p> <p>18 offense that they are -- probably are doing that.</p> <p>19 And once we did look at those that were</p> <p>20 not detected, guess what, they have a whole bunch</p> <p>21 of other violent -- violent acts that they</p> <p>22 weren't -- that they were connected to the violent</p> <p>23 acts. But they weren't identified as rapists or</p> <p>24 sexual assault offenders because the system --</p> <p>25 because of -- of that. The issue --</p> <p style="text-align: center;">Page 221</p>	<p>1 Q. So what you're saying is that undetected --</p> <p>2 undetected sexual -- undetected sexual assault</p> <p>3 offenders may have general recidivism rates that</p> <p>4 are higher than is generally believed?</p> <p>5 A. Right.</p> <p>6 Q. Okay. That's what I wanted to clarify.</p> <p>7 A. General recidivism, right.</p> <p>8 Q. Okay. So let's talk a little bit about</p> <p>9 victimization rates. And is it fair to say that</p> <p>10 in measuring victimization -- I mean, we talked</p> <p>11 about how many people don't report. So is it fair</p> <p>12 to say that in measuring victimization,</p> <p>13 researchers often use surveys as a way to get</p> <p>14 information on victimizations that are not</p> <p>15 reported to the police, and not -- therefore, not</p> <p>16 captured in criminal justice data?</p> <p>17 A. Correct.</p> <p>18 MR. DAMICH: Objection to form and</p> <p>19 foundation.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Okay. And is it fair to say that when you use a</p> <p>22 survey, the results can be impacted by the</p> <p>23 questions you ask?</p> <p>24 A. Correct.</p> <p>25 Q. And how you ask the questions? Like whether it's</p> <p style="text-align: center;">Page 222</p>
<p>1 in person versus online?</p> <p>2 A. Correct.</p> <p>3 Q. To whom you ask the question?</p> <p>4 A. Correct.</p> <p>5 Q. The size of the sample?</p> <p>6 A. Correct.</p> <p>7 Q. How frequently you ask the question?</p> <p>8 A. It depends on the question, but yes.</p> <p>9 Q. And then the response rate?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And we talked before about the Bureau of</p> <p>12 Justice Statistics National Crime Victimization</p> <p>13 survey, which I think you described as the gold</p> <p>14 standard for the --</p> <p>15 A. It's one of the gold standards.</p> <p>16 Q. Okay. And they do an annual victimization survey,</p> <p>17 correct?</p> <p>18 A. I don't think it's annual. I think it's every</p> <p>19 couple years, but I could be wrong.</p> <p>20 Q. Okay. And do you -- they have a large</p> <p>21 geographically stratified national random sample?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And do you know, they do in person</p> <p>24 interviews with multiple six-month follow-ups? If</p> <p>25 you know.</p> <p style="text-align: center;">Page 223</p>	<p>1 A. They -- yes, so they do multiple ones. It's by</p> <p>2 household. The unit of analysis is a household,</p> <p>3 not an individual. And then they study them for a</p> <p>4 couple of -- a period of time. And yeah, it's a</p> <p>5 nationally representative stratified sample.</p> <p>6 Q. Okay. And they have a very high response rate,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. It's, like, 78 percent, something like that?</p> <p>10 A. I couldn't exactly speak but it's a -- it's a good</p> <p>11 response rate.</p> <p>12 (At 2:30 p.m., Exhibit 16 marked.)</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. Okay. So let's look at their victimization</p> <p>15 survey. Okay. So I'm showing you here, this is</p> <p>16 from -- this is the BJS Criminal Victimization,</p> <p>17 2021. And when we scroll down to Table 14, let me</p> <p>18 see if I'm understanding this correctly. It looks</p> <p>19 like their annual victimization rate in 2021 for</p> <p>20 rape and sexual assault is point 07 percent. Am I</p> <p>21 reading that correctly?</p> <p>22 A. Can you -- point 07, there -- "number of</p> <p>23 victims" -- "number and percent of persons who are</p> <p>24 victims."</p> <p>25 In that -- but is it by a time period?</p> <p style="text-align: center;">Page 224</p>

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<p>1 Like are we looking at -- we're not looking at</p> <p>2 lifetime, right? We're, like, within the last six</p> <p>3 months or --</p> <p>4 Q. It looks like it's by year. It looks like 2017,</p> <p>5 2018, 2019, 2020. So we're not doing lifetime.</p> <p>6 We're talking about annual --</p> <p>7 A. Okay.</p> <p>8 Q. If I understand it.</p> <p>9 A. Okay. So, yeah, by -- by rates, it looks like.</p> <p>10 And then they have a very specific definition of</p> <p>11 rape and sexual assault.</p> <p>12 Q. Okay. So based on their definition of rape and</p> <p>13 sexual assault, they show an annual victimization</p> <p>14 rate in 2021 of point 07 percent, correct?</p> <p>15 A. Yes, each year that proportion of people</p> <p>16 experience a rape or a sexual assault.</p> <p>17 Q. And that wasn't data that was included in your</p> <p>18 report, correct?</p> <p>19 A. No.</p> <p>20 Q. Okay. And your report relied on the National</p> <p>21 Intimate Partner and Sexual Violence survey.</p> <p>22 A. Correct.</p> <p>23 Q. Which is I believe done by the Center for Disease</p> <p>24 Control and Prevention, correct?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 225</p>	<p>1 MS. AUKERMAN: And let me flip to that.</p> <p>2 Let's make this Exhibit 17.</p> <p>3 (At 2:32 p.m., Exhibit 17 marked.)</p> <p>4 BY MS. AUKERMAN:</p> <p>5 Q. Okay. Now the questions asked by the CDC are</p> <p>6 different from those asked by the Bureau of</p> <p>7 Justice Statistics, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And you talked about the importance of defining</p> <p>10 rape and sexual assault. Do you know if the BJS</p> <p>11 and the National Intimate Partner and Sexual</p> <p>12 Violence survey define those terms differently?</p> <p>13 MR. DAMICH: Objection. Form and</p> <p>14 foundation.</p> <p>15 THE WITNESS: This survey is just for</p> <p>16 intimate partner and sexual violence survey. The</p> <p>17 NCVS is, you know, as you saw, like a bunch of</p> <p>18 different types of crime. They're very different</p> <p>19 types of surveys. So they have different</p> <p>20 definitions. The other one is just rape and</p> <p>21 sexual assault, and this one as -- as I was</p> <p>22 mentioning, has a bunch of different types of</p> <p>23 sexual victimizations.</p> <p>24 Q. Okay. And are the -- so the survey instruments</p> <p>25 are different, correct?</p> <p style="text-align: center;">Page 226</p>
<p>1 A. Correct.</p> <p>2 Q. And then the samples are different, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And is the National Intimate Partner and Sexual</p> <p>5 Violence survey about a tenth of the size of the</p> <p>6 BJS sample?</p> <p>7 A. I don't -- I couldn't answer that.</p> <p>8 Q. Do you know if the response rates for the National</p> <p>9 Intimate Partner and Sexual Violence survey is</p> <p>10 lower than for the BJS survey?</p> <p>11 MR. DAMICH: Objection. Form and</p> <p>12 foundation.</p> <p>13 THE WITNESS: I don't know what the</p> <p>14 response rate is.</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. Okay.</p> <p>17 A. I mean, I -- yeah, I'm sure it's in the report in</p> <p>18 the methodology, but I don't know.</p> <p>19 Q. But in your report, you talk about lifetime</p> <p>20 prevalence, right? And that's obviously a</p> <p>21 different measure than annual victimization?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So on page 18 here of the National Intimate</p> <p>24 Partner and Sexual Violence survey, it looks</p> <p>25 like -- oops. It looks like that's where you were</p> <p style="text-align: center;">Page 227</p>	<p>1 drawing your data from.</p> <p>2 A. Correct.</p> <p>3 Q. And --</p> <p>4 A. This is the most commonly cited one in the sexual</p> <p>5 assault, sexual violence field.</p> <p>6 Q. Okay. And that's the one that says there's one in</p> <p>7 five lifetime experience --</p> <p>8 A. Correct.</p> <p>9 Q. -- of rape?</p> <p>10 Okay. And then it gives a rate of 1.2</p> <p>11 percent for rape in the preceding 12 months,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. So is it accurate to say that there's one</p> <p>15 survey conducted by the Bureau of Justice</p> <p>16 Statistics that shows a one year rate of point 07</p> <p>17 percent. And then you have a different survey</p> <p>18 that shows a one year rate of 1.2 percent,</p> <p>19 correct?</p> <p>20 A. Can you see if the one point -- the 1.2 might have</p> <p>21 different definitions. But...</p> <p>22 Q. I don't know if --</p> <p>23 A. So this is one is rape or attempted rape, and the</p> <p>24 other one -- I bet they're similar. But yeah,</p> <p>25 they -- they have, like, different samples. So --</p> <p style="text-align: center;">Page 228</p>

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<p>1 so --</p> <p>2 Q. So I guess what I'm getting at --</p> <p>3 A. Yeah.</p> <p>4 Q. Yeah, you have two different surveys. They're</p> <p>5 both reporting on sexual victimization but they're</p> <p>6 reporting on somewhat different aspects of it,</p> <p>7 correct?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And so the Bureau of Justice Statistics has</p> <p>10 a one year rate of point 07 percent, correct?</p> <p>11 A. Yeah.</p> <p>12 Q. And --</p> <p>13 A. For how you define it, yeah. For how you --</p> <p>14 Q. Right.</p> <p>15 A. -- define it.</p> <p>16 Q. And the CDC has a one year rate of 1.2 percent,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And it's always dangerous when you have lawyers do</p> <p>20 math, but by my math, that came out to 1,614</p> <p>21 percent higher for the BJS study than the CDC</p> <p>22 rate. Does that sound right to you?</p> <p>23 A. I don't think that sounds right because you're</p> <p>24 talking about very small base rates. So you</p> <p>25 shouldn't use a percent like that when you're</p> <p style="text-align: center;">Page 229</p>	<p>1 talking about a very small base rate because</p> <p>2 that's what you will get. If something is really</p> <p>3 rare, very small, a percent change isn't the</p> <p>4 statistic you would use.</p> <p>5 Q. Okay. But is it fair to say that those rates are</p> <p>6 different?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. But I would say within -- but they're both pretty</p> <p>10 close actually in terms of measuring something as</p> <p>11 difficult as -- as sexual violence is.</p> <p>12 Q. So you think 1.2 percent and --</p> <p>13 A. Point 07 --</p> <p>14 Q. -- point 07 --</p> <p>15 A. Yeah.</p> <p>16 Q. -- percent are close --</p> <p>17 A. Yes.</p> <p>18 Q. -- to one another?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Is it fair to say that different</p> <p>21 researchers using different methodologies and</p> <p>22 different definitions will make different</p> <p>23 estimates about the prevalence of sexual</p> <p>24 offending?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 230</p>
<p>1 Q. Okay. Let's talk really briefly about paragraph</p> <p>2 13 in your report where you talk about the cost of</p> <p>3 rape. And what you're describing here is the</p> <p>4 societal cost of the offense of rape, correct?</p> <p>5 A. Correct.</p> <p>6 Q. You're not talking about the societal cost of</p> <p>7 other types of sexual offenses?</p> <p>8 A. Correct. Just rape.</p> <p>9 Q. Okay. So the societal costs of a rape might be</p> <p>10 different than a societal cost of having an older</p> <p>11 teen engage in sexual touching with a younger teen</p> <p>12 who's not old enough to consent, correct?</p> <p>13 A. I don't know what those costs are. The study has</p> <p>14 a whole list of those crimes. So that study may</p> <p>15 have those different types of sexual offense</p> <p>16 crimes in there. I didn't -- I didn't -- since</p> <p>17 our SAK data is based on rapes, I pulled the rape</p> <p>18 cost. So I can't speak to what the other ones</p> <p>19 are, only what I've published on, which is rape.</p> <p>20 Q. You're talking about the McAllister study; --</p> <p>21 A. Correct.</p> <p>22 Q. -- is that correct?</p> <p>23 A. Yeah.</p> <p>24 Q. That's --</p> <p>25 A. It's a -- it's a -- it's a very commonly cited</p> <p style="text-align: center;">Page 231</p>	<p>1 study in criminology when you talk about cost of</p> <p>2 crime.</p> <p>3 Q. Okay. And so that was based on 2010. That was</p> <p>4 published in 2010, correct?</p> <p>5 A. Correct, but my data is -- has been adjusted.</p> <p>6 Q. Right. Okay. So --</p> <p>7 A. The costs have been adjusted for...</p> <p>8 Q. Yeah. I don't believe that I saw anything in that</p> <p>9 study that related to other types of sexual</p> <p>10 offenses other than rape.</p> <p>11 A. Okay.</p> <p>12 Q. And you're not aware of any calculations around</p> <p>13 the societal cost of sexual offenses other than</p> <p>14 rape?</p> <p>15 A. No, just -- I've just...</p> <p>16 Q. And your calculations are specific to rape?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. You mentioned that you looked at some of</p> <p>19 the work of some of our experts. Are you familiar</p> <p>20 more broadly with the work of Dr. Carl Hanson?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you cite his work in your report,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Is it fair to say that his work is widely cited?</p> <p style="text-align: center;">Page 232</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. Is it fair to say that he's considered one</p> <p>3 of the top authorities in the field?</p> <p>4 A. That I don't know.</p> <p>5 Q. Are you familiar with the work of Dr. Kelly Socia?</p> <p>6 A. I was not before reading that.</p> <p>7 Q. Are you familiar with the work of Dr. Elizabeth</p> <p>8 Letourneau?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. Are you familiar with the work of Dr. James</p> <p>11 J. Prescott?</p> <p>12 A. No.</p> <p>13 Q. Are you familiar with the work of Dr. Kristen</p> <p>14 Zgoba?</p> <p>15 A. No.</p> <p>16 Q. Okay. So for these last four experts that I</p> <p>17 mentioned, Dr. Socia, and Dr. Letourneau, Dr.</p> <p>18 Prescott, and Dr. Zgoba, is the reason that you're</p> <p>19 not familiar with their work, that you're not</p> <p>20 working in the same fields as they're working in?</p> <p>21 A. Well, I don't know who the others are. The Socia</p> <p>22 one I wasn't familiar with, so I looked up his CV.</p> <p>23 He seems to have a wide variety of topics that he</p> <p>24 does work on, not just sexual violence.</p> <p>25 And the -- he has a couple older studies</p> <p style="text-align: center;">Page 233</p>	<p>1 it looked like on the sexual offender registry.</p> <p>2 And they were specifically on the registry and</p> <p>3 measuring aspects of the registry. So we would be</p> <p>4 publishing in different -- different -- different</p> <p>5 topics.</p> <p>6 Q. So you're publishing in different areas than these</p> <p>7 experts are publishing in; is that --</p> <p>8 A. Correct.</p> <p>9 Q. -- fair to say?</p> <p>10 A. I mean, Hanson less so in a general sense because</p> <p>11 he has some of the stuff about recidivism and</p> <p>12 Lussier and others who do work in recidivism. But</p> <p>13 -- but I don't -- the research I do isn't on --</p> <p>14 the question isn't about recidivism or the</p> <p>15 effectiveness of the -- the registry. Those are</p> <p>16 different questions.</p> <p>17 Q. I'm sorry, say that again. The research you do is</p> <p>18 not on recidivism or the effectiveness of the</p> <p>19 registry, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So let's look -- I promise we're getting</p> <p>22 close to done here.</p> <p>23 Let's take a look at your CV. Let me</p> <p>24 share my screen.</p> <p>25 MS. AUKERMAN: So let's make this Exhibit</p> <p style="text-align: center;">Page 234</p>
<p>1 18.</p> <p>2 (At 2:42 p.m., Exhibit 18 marked.)</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. Okay. This is your CV?</p> <p>5 A. Yeah, it looks like as of September.</p> <p>6 Q. Okay. Have there been any changes since then?</p> <p>7 A. Yeah, there's always changes.</p> <p>8 Q. Does it reflect your current experience that's</p> <p>9 relevant to this litigation?</p> <p>10 A. I mean, I -- I have -- you know, I continue to</p> <p>11 publish and do research and get awards and grants</p> <p>12 and things. So it's updated. But none of this is</p> <p>13 wrong, I just have added more to it over time.</p> <p>14 Q. Is there anything that you'd like to tell us about</p> <p>15 that you've added that's not on here?</p> <p>16 A. Since September, I've submitted a couple articles</p> <p>17 for publication. But what you put on your CV...</p> <p>18 Q. But they haven't been published, correct?</p> <p>19 A. Correct. And I did submit an NIJ report that --</p> <p>20 for a final report since this. And I have maybe a</p> <p>21 grant or two more but...</p> <p>22 Q. Okay. So if you had to describe your professional</p> <p>23 background in one word, would you describe</p> <p>24 yourself as a victimologist?</p> <p>25 A. I think that's one way but I -- that's certainly</p> <p style="text-align: center;">Page 235</p>	<p>1 not just one word. I -- I don't think I could</p> <p>2 describe myself in just -- with -- that wouldn't</p> <p>3 be all encompassing.</p> <p>4 Q. Okay. So what else would you include?</p> <p>5 A. I do work in applied research and program</p> <p>6 evaluation. I do research on, you know, sexual</p> <p>7 violence more generally, as well as other types of</p> <p>8 more gender-based violence. But as you can see</p> <p>9 over my career, I've studied and looked at -- you</p> <p>10 know, like most -- like most academics, you know,</p> <p>11 like, have changed a bit over time. I haven't</p> <p>12 just had one area of study.</p> <p>13 Q. I didn't read the articles in Polish.</p> <p>14 A. I didn't actually either. My advisor translated</p> <p>15 them for me.</p> <p>16 Q. Okay. You're not trained as a psychologist,</p> <p>17 correct?</p> <p>18 A. I'm sorry?</p> <p>19 Q. You're not trained as a psychologist, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. No. Correct.</p> <p>23 Q. What training do you have in empirical research?</p> <p>24 A. So do you mean like -- like what do you mean by,</p> <p>25 like, what classes have I taken, what have I</p> <p style="text-align: center;">Page 236</p>

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<p>1 published in, what -- like what specifically --</p> <p>2 Q. Yeah, exactly.</p> <p>3 A. I mean, I would define and have defined myself as</p> <p>4 a -- one aspect of what I do is quantitative</p> <p>5 methodology, but I'm mixed method as well. I've</p> <p>6 done qualitative studies, quantitative studies,</p> <p>7 spatial studies. I -- I do a lot of work around</p> <p>8 methodology.</p> <p>9 So that could be research methods, it</p> <p>10 could be program evaluations, statistics. I've</p> <p>11 taken and have done a variety of quantitative</p> <p>12 types of papers, and can do that and understand</p> <p>13 that as well as, like, more qualitative stuff.</p> <p>14 Q. Have you done longitudinal research?</p> <p>15 A. I have.</p> <p>16 Q. What kind of longitudinal research?</p> <p>17 A. My dissertation was longitudinal.</p> <p>18 Q. Okay. Was that on sexual assault issues?</p> <p>19 A. It was not. It was actually a panel study, not</p> <p>20 just longitudinal. But it was not, it was on</p> <p>21 women and work.</p> <p>22 Q. Okay. Have you done survival analysis?</p> <p>23 A. I have.</p> <p>24 Q. And in what context?</p> <p>25 A. In -- for my dissertation.</p> <p style="text-align: center;">Page 237</p>	<p>1 Q. Okay. So again, not in the context of sexual</p> <p>2 assault?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. In terms of statistics, there are a variety</p> <p>5 of different fields within statistics, correct?</p> <p>6 A. Correct.</p> <p>7 Q. What would you describe those as?</p> <p>8 A. I would -- like can you give me a little bit more</p> <p>9 of what you're looking for?</p> <p>10 Q. I guess, I'm trying to understand, I mean, my --</p> <p>11 I'm not a statistician at all, but my</p> <p>12 understanding is that there are different types of</p> <p>13 statistics and people are trained in particular</p> <p>14 types of statistics. And I'm trying to</p> <p>15 understand, like, what are the areas of statistics</p> <p>16 that your work is focused on.</p> <p>17 A. So there is a general divide between statistics</p> <p>18 from the statistics department as compared to</p> <p>19 quantitative methodology and/or those -- sometimes</p> <p>20 it's called applied statistics. So I'm not</p> <p>21 trained in the statistics department. It was</p> <p>22 always -- the work that I've done is always much</p> <p>23 more around methodology.</p> <p>24 So being able to have -- so the</p> <p>25 difference is that a statistician, you give them</p> <p style="text-align: center;">Page 238</p>
<p>1 data and you tell them the research question and</p> <p>2 then they often will then just do the stats part.</p> <p>3 A quantitative methodologist comparatively has the</p> <p>4 one that has the data, comes up with the</p> <p>5 questions, and also then does the -- the methods</p> <p>6 or the statistics associated with that.</p> <p>7 Q. Are you trained in predictive statistics?</p> <p>8 A. Depends on what -- what you mean by predictive.</p> <p>9 Like regression predictive or do you mean, like --</p> <p>10 like --</p> <p>11 Q. Predictive of the future.</p> <p>12 A. Of the future?</p> <p>13 Q. Yeah.</p> <p>14 A. Like --</p> <p>15 Q. Statistics about what is likely to happen in the</p> <p>16 future.</p> <p>17 A. Like -- oh, well, Risk Terrain Modeling has some</p> <p>18 of that, and we're doing some work around Risk</p> <p>19 Terrain Modeling.</p> <p>20 Q. Have you taken any courses in predictive</p> <p>21 statistics?</p> <p>22 A. Predictive statistics. No. I mean, again, Risk</p> <p>23 Terrain Modeling uses some aspects of that, but</p> <p>24 not a class in it. Of course I graduated a long</p> <p>25 time ago.</p> <p style="text-align: center;">Page 239</p>	<p>1 Q. Sure. But it's not something that you published</p> <p>2 on or...</p> <p>3 A. No, that's not really a term I would use or that</p> <p>4 is used in my -- so --</p> <p>5 Q. It's not a term that's used in the work that you</p> <p>6 do?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Okay.</p> <p>9 A. Because regression is predictive, but it's not of</p> <p>10 the future.</p> <p>11 Q. Okay.</p> <p>12 A. So if I know X, can I predict Y? Yes. That's --</p> <p>13 that's regression. If you want to say if I know</p> <p>14 now, can I predict where crime will be? That's</p> <p>15 regression -- or that's Risk Terrain Modeling.</p> <p>16 Q. Okay. Now your CV lists the courses, and I'm</p> <p>17 going to scroll down to page 11 here. It lists</p> <p>18 the courses that you've taught. Are there any</p> <p>19 other areas that you've taught in that are not</p> <p>20 listed here?</p> <p>21 A. This semester I taught a graduate program</p> <p>22 evaluation course. It's on there, but this one</p> <p>23 only says a doctoral course. I taught a master's</p> <p>24 level one at Cleveland State this semester. But</p> <p>25 other than that, they should all be on there.</p> <p style="text-align: center;">Page 240</p>

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<p>1 Q. And where it says the teaching and research 2 interest, that summarizes the areas of your -- of 3 your research interest as well then, right? 4 A. Correct. 5 Q. Okay. You've not -- I think you said earlier, 6 you've not done any work on sex offender 7 registration, correct? 8 A. Correct. 9 Q. You've not written books about or articles about 10 sex offender registration? 11 A. Correct. 12 Q. You've not done empirical work on sex offender 13 registries and whether they increase or decrease 14 sexual offending, correct? 15 A. Correct. 16 Q. You're not holding yourself out as an expert on 17 sex offender registration? 18 A. Correct. No. 19 Q. And you're not holding yourself out as an expert 20 on whether sex offender registries increase or 21 decrease sexual offending? 22 A. Correct. 23 Q. Okay. 24 All right. Compensation, you list \$250 25 an hour as your rate. Is that the current rate?</p> <p style="text-align: center;">Page 241</p>	<p>1 A. Correct. 2 Q. Okay. How many hours have you worked on this 3 case? 4 A. I'd have to look it up, but do you want me to 5 provide an estimate? 6 Q. Just approximate, yeah. 7 A. Maybe 15. 8 Q. Okay. And that includes reviewing the materials, 9 writing your report, your discussions with the 10 attorneys -- 11 A. Correct. 12 Q. -- for this deposition, that includes everything? 13 A. Correct. 14 Q. Okay. So about 15 hours. Is there any time that 15 you invested that you didn't bill for? 16 A. No. 17 Q. Okay. 18 MS. AUKERMAN: All right. Let's take a 19 ten minute break, and I think I'm pretty close to 20 done but I want to take a minute and figure out -- 21 Scott, are you going to have questions? 22 MR. DAMICH: You know what, I probably 23 won't have very much at all, if anything, so... 24 MS. AUKERMAN: Okay. So let's just take 25 a minute. Okay.</p> <p style="text-align: center;">Page 242</p>
<p>1 MR. DAMICH: Take ten minutes. 2 (From 2:53 p.m. to 3:05 p.m., a break was 3 held.) 4 MS. AUKERMAN: Okay. So I don't think I 5 have any other questions. I might have a few more 6 questions after Scott asks you any questions he 7 has. But I think I'm done with my initial set of 8 questions, so... 9 THE WITNESS: Okay. 10 MR. DAMICH: I don't have any follow-up. 11 MS. AUKERMAN: All right. Well, then we 12 are done. Dr. Lovell, thank you very much for 13 your time. I appreciate that. And it was really 14 interesting to learn about your work, and I wish 15 you all the best. 16 THE WITNESS: Thank you very much. 17 (Proceedings concluded at 3:05 p.m.) 18 * * * 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 243</p>	<p>1 2 STATE OF MICHIGAN) 3) ss 4 COUNTY OF OAKLAND) 5 I certify that this transcript, 6 consisting of 244 pages, is a complete, true, and 7 correct record of the testimony of Rachel Lovell 8 taken remotely by me, a certified stenographic 9 reporter, on May 19, 2023. 10 I also certify that prior to taking this 11 remote deposition, Rachel Lovell was duly sworn to 12 tell the truth. 13 14  15 Kelly Bonheim, CSR #8167 16 Notary Public: Oakland County, Michigan 17 Acting in the County of: Oakland 18 My commission expires: 11/1/2027 19 Date of completion of transcript: 6-12-23 20 21 22 23 24 25</p> <p style="text-align: center;">Page 244</p>

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